

The Supreme Court (General Civil Procedure) Rules 2015 (Vic)

- This discussion:
- Order 29 from r 29.05 (Discovery and inspection of documents)
- Order 32 (Preliminary discovery and discovery from non-party)
- Order 36 (Amendment)
- Order 37 (Inspection, detention, and preservation of property)
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- Order 38 (Injunctions)
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Order 29: Discovery and inspection of documents (cont) – court orders

- R 29.05.1: Order for general discovery
- At any stage of a proceeding, the Court may order any party to give discovery in accordance with Rule 29.01.1.
- R 29.05.02: Order for expanded discovery
- (1) At any stage of a proceeding, the Court may, by order, expand a party's obligation to give discovery beyond that required by Rule 29.01.1.
- (2) Without limiting any power of the Court, an order under paragraph (1) may specify any document or class of document to which the expanded obligation relates.

R 26.06: Co-defendants and third party

- (1) A defendant who has pleaded shall be entitled to obtain from the party making discovery a copy of any affidavit of documents served on—
 - (a) the plaintiff by any other defendant to the proceeding;
 - (b) any other defendant by the plaintiff.
- (2) Where the defendant has served a counter-claim joining another person with the plaintiff as defendant to the counter-claim in accordance with Rule 10.03 , paragraph (1), with any necessary modification, applies as if—
 - (a) the defendant were the plaintiff; and
 - (b) the plaintiff and the other person were the defendants.
- (3) A third party who has pleaded shall be entitled to obtain from the party making discovery a copy of any affidavit of documents served—
 - (a) by the plaintiff on the defendant by whom the third party was joined;
 - (b) on the plaintiff by that defendant.

R 29.07: Order for discovery

- (1) In a proceeding within Rule 29.01, notwithstanding that the pleadings between any parties are not closed, the Court may order that any of those parties make discovery of documents to any other of those parties.
- (2) In a proceeding not within Rule 29.01, the Court may at any stage order any party to make discovery of documents.
- (3) An order under paragraph (1) or (2) may be limited to such documents or classes of document, or to such questions in the proceeding, as the Court thinks fit.

R 29.08: Order for particular discovery

- (1) This Rule applies to any proceeding in the Court.
- (2) Where, at any stage of a proceeding, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for a belief that some document or class of document relating to any question in the proceeding may be or may have been in the possession of a party, the Court may order that party to make and serve on any other party an affidavit stating—
 - (a) whether that document or any, and if so what, document or documents of that class is or has been in that party's possession; and
 - (b) if it has been but is no longer in that party's possession, when the party parted with it and that party's belief as to what has become of it.
- (3) An order may be made against a party under paragraph (2) notwithstanding that the party has already made or been required to make an affidavit of documents.

R 29.09: Inspection of documents referred to in affidavit of documents

- (1) A party upon whom an affidavit of documents is served in accordance with Rule 29.03 or in accordance with an order made under Rule 29.07 or 29.08 and a party to whom an affidavit of documents is supplied in accordance with Rule 29.06 may, by notice to produce served on the party making the affidavit, require that the party produce the documents in that party's possession referred to in the affidavit (other than any which that party objects to produce) for inspection.
- (2) A party upon whom a notice to produce is served in accordance with paragraph (1) shall, within seven days after that service, serve on the party requiring production a notice appointing a time within seven days after service of the notice under this paragraph when, and a place where, the documents may be inspected.
- (3) A notice to produce under paragraph (1) shall be in Form 29C.
- (4) A party to whom documents are produced for inspection under this Rule may take copies of the documents.
- (5) For the purpose of paragraph (4), taking a copy of a document includes photocopying the document, and if the party to whom a document is produced states that the party wishes to have it photocopied, the party producing the document shall at that party's option either—
 - (a) allow the other party to photocopy the document at such place as the parties agree; or
 - (b) supply the other party with a photocopy of the document.
- (6) Unless the Court otherwise orders, the cost of a photocopy of a document supplied to a party in accordance with paragraph (5) shall—
 - (a) be borne by that party in the first instance and be ultimately a cost in the proceeding; and
 - (b) be in the amount allowed in Appendix A for copy documents.

R 29.10: Inspection of documents referred to in pleadings and affidavits

- (1) This Rule applies to any proceeding.
- (2) Where, in the originating process filed by a party or in any pleading, interrogatories or answers, affidavit or notice filed by a party, reference is made to a document, any other party, by notice to produce served on that party, may require that party to produce the document for inspection.
- (3) Except as provided by paragraph (4), Rule 29.09, with any necessary modification, applies to the production and inspection of a document under this Rule.
- (4) A party upon whom a notice to produce is served under paragraph (2) shall not be required to produce a document for inspection where—
 - (a) the party claims that the document is privileged from production, and that party makes and serves on the other party an affidavit in which the party—
 - (i) makes that claim; and
 - (ii) states sufficiently the grounds of the privilege;
 - (b) the document is not in that party's possession, and the party makes and serves on the other party an affidavit in which the party—
 - (i) states that fact; and
 - (ii) states to the best of the party's knowledge, information and belief where the document is and in whose possession it is; and
 - (iii) where the document has been but is no longer in the party's possession, when the party parted with it and the party's belief as to what has become of it.
- (5) A notice to produce under paragraph (2) shall be in Form 29C.

R 29.11: Order for discovery

- Where a party—
 - (a) fails to make discovery of documents in accordance with Rules 29.03 and 29.04;
 - (b) fails to serve a notice appointing a time for inspection of documents as required by Rule 29.09 or 29.10;
 - (c) objects to produce any document for inspection;
 - (d) offers inspection unreasonable as to time or place; or
 - (e) objects to allow any document to be photocopied or to supply a photocopy of the document—
- the Court may order the party to do such act as the case requires.

R 29.12: Direction as to documents

- (1) Where a party is entitled under this Order to inspect a document which consists of—
 - (a) a video tape, audio tape, disc, film or other means of recording, the Court may give directions—
 - (i) for the screening or playing thereof; and
 - (ii) for the making by or supply to the party of a transcript of the recording (insofar as it can be transcribed) or a copy of the recording;
 - (b) information which has been processed by or is stored in a computer, the Court may give directions for making the information available.
- (2) On an application under paragraph (1), the Court may make an order for the costs and expenses of the party against whom an order giving directions is sought.
- (3) The Court may make an order giving directions on condition that the party applying give security for the costs and expenses of the party against whom the order is made.

R 29.12.1: Default notice

- (1) This Rule shall not limit the power of the Court under Rule 24.02.
- (2) If a party required to make discovery of documents fails to make discovery within the time limited by these Rules or fixed by any order of the Court, the party entitled to the discovery may serve on that party a notice in Form 29D.
- (3) If, within seven days after service of a notice under paragraph (2), the party on whom the notice is served does not make discovery, the Court may order—
 - (a) if the party required to make discovery is the plaintiff, that the proceeding be dismissed;
 - (b) if the party required to make discovery is a defendant, that the defendant's defence, if any, be struck out.
- (4) This Rule, with any necessary modification, applies to a counterclaim and to a claim by third party notice as if the counterclaim or the third party claim were a proceeding.
- (5) For the purpose of Rule 21.02(1), a defendant whose defence is struck out in accordance with paragraph (3) shall be taken to be a defendant who, being required to serve a defence, does not do so within the time limited for that purpose.
- (6) The Court may set aside or vary an order made under paragraph (3).

R 29.13: Inspection of document by Court

- Where an application is made for an order under Rule 29.11 and a claim is made that the document is privileged from production or objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection.
- **R 29.14: Default on discovery**
- (1) Without limiting Rule 24.02, a party who does not within the time limited comply with an order under Rule 29.08(2) or 29.11, or an order under Rule 29.12(1) giving directions shall be liable to committal.
- (2) Service on the solicitor for a party of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order but the party may show in answer to the application that that party had no notice or knowledge of the order.
- (3) A solicitor on whom such an order made against the solicitor's client is served and who fails without reasonable excuse to give notice of the order to the solicitor's client shall be liable to committal.

- R 29.15: Continuing obligation to make discovery
- A party who has made an affidavit of documents is under a continuing obligation to make discovery of documents with respect to documents of which the party obtains possession after making the affidavit.
- R 29.16: Discovery after directions
- If the Court gives directions about discovery or inspection of documents, no party may, without further order, serve notice for discovery on any other party except in accordance with those directions.

Order 32: Preliminary discovery and discovery from non-party

- Notes:
- "description" includes the name, place of residence, place of business, occupation and sex of the person against whom the applicant desires to bring a proceeding and whether that person is an individual or a corporation (r 32.01);
- "possession" means possession, custody or power (r 32.01);
- An order made under this Order shall not operate to require the person against whom the order is made to produce any document or answer any question which, on the ground of privilege, that person is not required to produce or answer (r 32.02).

R 32.03: Discovery to identify a defendant

- (1) The Court may make an order under paragraph (2) where—
 - (a) an applicant, having made reasonable inquiries, is unable to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in the Court against that person (in this Rule called the person concerned); and
 - (b) it appears that some person has or is likely to have knowledge of facts, or has, or is likely to have or has had or is likely to have had in that person's possession any document or thing, tending to assist in such ascertainment.
- (2) The Court may order that the person, and in the case of a corporation, the corporation by an appropriate officer, shall—
 - (a) attend before the Court to be orally examined in relation to the description of the person concerned;
 - (b) make discovery to the applicant of all documents which are or have been in his, her or its possession relating to the description of the person concerned.
- (3) Where the Court makes an order under paragraph (2)(a), it may—
 - (a) order that the person or corporation against whom or which the order is made shall produce to the Court on the examination any document or thing in his, her or its possession relating to the description of the person concerned;
 - (b) direct that the examination be held before an Associate Judge.

- R 32.04: Party an applicant
- Rule 32.03, with any necessary modification, applies where the applicant is a party to a proceeding and wishes to make, in the proceeding, against a person who is not a party, a claim which the applicant could properly have made in the proceeding had the person been a party.

R 32.05: Discovery from prospective defendant

- Where—
- (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from a person whose description the applicant has ascertained;
- (b) after making all reasonable inquiries, the applicant has not sufficient information to enable the applicant to decide whether to commence a proceeding in the Court to obtain that relief; and
- (c) there is reasonable cause to believe that that person has or is likely to have or has had or is likely to have had in that person's possession any document relating to the question whether the applicant has the right to obtain the relief and that inspection of the document by the applicant would assist the applicant to make the decision—
- the Court may order that that person shall make discovery to the applicant of any document of the kind described in paragraph (c).

- R 32.06: Party an applicant
- Rule 32.05, with any necessary modification, applies where—
 - (a) the applicant is a party to a proceeding; and
 - (b) there is reasonable cause to believe that the applicant has or may have the right to obtain against a person who is not a party relief which the applicant could properly have claimed in the proceeding had the person been a party.

R 32.07: Discovery from non-party

- On the application of any party to a proceeding the Court may order that a person who is not a party and in respect of whom it appears that that person has or is likely to have or has had or is likely to have had in that person's possession any document which relates to any question in the proceeding shall make discovery to the applicant of any such document.

R 32.08: Procedure

- (1) An application under Rule 32.03 or 32.05 shall be made by originating motion to which the person against whom the order is sought shall be made respondent.
- (2) An application under Rule 32.04, 32.06 or 32.07 shall be made by summons served on every party to the proceeding and served personally on the person against whom the order is sought.
- (3) An order may be made by an Associate Judge under any of the Rules referred to in paragraphs (1) and (2).
- (4) An originating motion under paragraph (1) or a summons under paragraph (2) shall be supported by an affidavit—
 - (a) stating the facts on which the application is made; and
 - (b) specifying or describing the documents or any class of documents in respect of which the order is sought.
- (5) A copy of the supporting affidavit shall be served on every person on whom the originating motion or the summons is served.

R 32.09: Inspection of documents

- Rule 29.09, with any necessary modification, applies to the inspection of the documents referred to in an affidavit of documents made and served in accordance with this Order as if the affidavit were an affidavit of documents as referred to in Rule 29.09(1).
- R 32.10: Directions as to documents
- Rule 29.12, with any necessary modification, applies to the inspection of a document under this Order.
- Note r 32.11 as to costs

Order 36: Amendment

- R 36.01: General
- (1) For the purpose of—
 - (a) determining the real question in controversy between the parties to any proceeding; or
 - (b) correcting any defect or error in any proceeding; or
 - (c) avoiding multiplicity of proceedings—
- the Court may, at any stage order that any document in the proceeding be amended or that any party have leave to amend any document in the proceeding.
- (2) In this Order "document" includes—
 - (a) originating process;
 - (b) an indorsement of claim on originating process; and
 - (c) a pleading.
- (3) An indorsement of claim or pleading may be amended under paragraph (1) notwithstanding that the effect is to add or substitute a cause of action arising after the commencement of the proceeding.
- (4) A mistake in the name of a party may be corrected under paragraph (1), whether or not the effect is to substitute another person as a party.

R 36.01 cont

- (5) Where an order to correct a mistake in the name of a party has the effect of substituting another person as a party, the proceeding shall be taken to have commenced with respect to that person on the day the proceeding commenced.
- (6) Notwithstanding the expiry of any relevant limitation period after the day a proceeding is commenced, the Court may make an order under paragraph (1) where it is satisfied that any other party to the proceeding would not by reason of the order be prejudiced in the conduct of that party's claim or defence in a way that could not be fairly met by an adjournment, an award of costs or otherwise.
- (7) For the purpose of paragraph (6) any other party to the proceeding includes a person who is substituted as a party by virtue of an order made to correct a mistake in the name of a party.
- (8) Paragraph (6), with any necessary modification, applies to an application under Rule 14.03(2).
- (9) Paragraph (1) shall not apply to the amendment of a judgment or an order.

R 36.02: Failure to amend within time limited

- An order giving a party leave to amend a document shall cease to have effect if the party has not amended the document in accordance with the order at the expiration of—
 - (a) the time limited by the order for making the amendment;
or
 - (b) if no time was limited, 21 days from the date of the order.

R 36.03: Amendment of writ or other originating process before service and disallowance of amendment

- (1) With leave of the Prothonotary or of the Court, a party may amend a writ or other originating process if—
 - (a) the writ or other originating process has not been served on the defendant or other party to the proceeding;
 - (b) the party seeking to amend files an affidavit stating that service of the original writ or other originating process on the defendant or other party to the proceeding has not occurred; and
 - (c) all sealed copies of the writ or other originating process and other documents filed with the writ or other originating process are returned to the Court.
- (2) Each amendment under paragraph (1) shall be made in such a way as to distinguish the amendment from the original writ or other originating process.
- (3) Where a party amends a writ or other originating process in accordance with paragraph (1), the Court may, on application by any other party made within 21 days after service of the amended writ or other originating process on that party—
 - (a) disallow the amendment; or
 - (b) allow it either wholly or in part.

R 36.04: Amendment of pleading and disallowance of amendment

- (1) A party may amend any pleading served by that party—
 - (a) once before the close of pleadings; or
 - (b) at any time by leave of the Court or with the consent of all other parties.
- (2) Where a party amends a pleading in accordance with paragraph (1)(a), the Court may, on application by any other party made within 21 days after service of the amended pleading on that party—
 - (a) disallow the amendment; or
 - (b) allow it either wholly or in part.

R 36.05: How pleading amendment made

- (1) Unless the Court otherwise orders, an amendment to a pleading shall be made by—
 - (a) amending the copy of the pleading filed in the Court or filing a copy of that pleading as amended; and
 - (b) serving a copy of the amended pleading on all parties.
- (2) A party who files an amended copy of a pleading in accordance with paragraph (1)(a) shall indorse the copy pleading previously filed with a statement to the effect that the amended copy has been substituted.
- (3) Where either of the requirements of paragraph (1)(a) is complied with, the Prothonotary shall, as the case requires, indorse the copy of the pleading filed in the Court with the date it is amended or the copy of the pleading as amended with the date it is filed.
- (4) Each amendment to a pleading shall be made in such a way as to distinguish the amendment from the original pleading and from any previous amendment to the original.

R 36.06: Pleading to an amended pleading

- (1) A party shall plead to an amended pleading within 30 days after it is served on that party.
- (2) Where a party has pleaded to a pleading which is subsequently amended, the party shall be taken to rely on that party's original pleading in answer to the amended pleading unless the party pleads to it within the time limited for so doing.
- R 36.07: Amendment of judgment or order
- The Court may at any time correct a clerical mistake in a judgment or an order or an error arising in a judgment or an order from any accidental slip or omission.

Order 37 (Inspection, detention, and preservation of property)

- R 37.01: Inspection, detention etc. of property
- (1) In any proceeding the Court may make an order for the inspection, detention, custody or preservation of any property, whether or not in the possession, custody or power of a party.
- (2) An order under paragraph (1) may authorise any person to—
 - (a) enter any land or do any other thing for the purpose of obtaining access to the property;
 - (b) take samples of the property;
 - (c) make observations (including the photographing) of the property;
 - (d) conduct any experiment on or with the property;
 - (e) observe any process.
- (3) On an application under paragraph (1), the Court may make an order for the costs and expenses of any person not being a party where—
 - (a) that person attends on the hearing of the application pursuant to a summons served under Rule 37.03(1); or
 - (b) the Court makes an order under paragraph (1) which will affect that person.
- (4) The Court may make an order under this Rule on condition that the party applying for the order give security for the costs and expenses of any person, whether or not a party, who will be affected by the order.

R 37.02: Inspection from prospective defendant

- (1) This Rule applies to any property not being a document.
- (2) In this Rule "applicant" means an applicant for an order under the Rule.
- (3) Where—
 - (a) there is reasonable cause to believe that the applicant has or may have the right to obtain relief in the Court from an identified person;
 - (b) after making all reasonable enquiries, the applicant has not sufficient information to enable the applicant to decide whether to commence a proceeding in the Court to obtain that relief; and
 - (c) there is reasonable cause to believe that that person has or is likely to have in that person's possession, custody or power any property relating to the question whether the applicant has the right to obtain the relief and that inspection of the property by the applicant would assist the applicant to make the decision—
- the Court may make an order for the inspection, detention, custody or preservation of the property.
- (4) An order under paragraph (3) may authorise any person to do any of the things referred to in Rule 37.01(2).
- (5) On an application under this Rule, the Court may make an order for the costs and expenses of—
 - (a) the applicant; and
 - (b) the person against whom the order is sought.
- (6) The Court may make an order under this Rule on condition that the applicant give security for the costs and expenses of the person against whom the order is made.

R 37.03: Procedure

- (1) An application for an order under Rule 37.01 shall be made by summons—
 - (a) served on all parties to the proceeding; and
 - (b) served personally on each person who would be affected by the order if made.
- (2) The Court may make an order under Rule 37.01 notwithstanding that any person not being a party who will be affected by the order has not been served with the summons personally or at all.
- (3) An application under Rule 37.02 shall be made by originating motion to which the person against whom the order is sought shall be made respondent.
- (4) An order shall not be made under Rule 37.02 except by a Judge of the Court.
- (5) A summons under paragraph (1) or an originating motion under paragraph (3) shall be supported by an affidavit—
 - (a) stating the facts on which the application is made; and
 - (b) specifying or describing the property in respect of which the order is sought.
- (6) A copy of the supporting affidavit shall be served on every person on whom the summons or originating motion is served.

- R 37.04: Disposal of perishable property
- Where, in a proceeding concerning any property (other than land) or in a proceeding in which any question may arise as to any property (other than land), the property is of a perishable nature or is likely to deteriorate or diminish in value if kept, the Court may make an order for the sale or other disposal of the whole or any part of the property.
- R 37.05: Payment into Court in discharge of lien
- (1) Where in any proceeding—
 - (a) the plaintiff claims the recovery of specific property (other than land); and
 - (b) it appears from the pleadings or otherwise that the defendant does not dispute the title of the plaintiff but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money—
- the Court may order that the plaintiff be at liberty to pay into court, to abide the event of the proceeding, the amount of money in respect of which the security is claimed and such further amount, if any, for interest and costs as the Court may direct and that, upon the making of such payments, the property claimed be given up to the plaintiff.
- (2) This Rule, with any necessary modification, applies to a counterclaim.

- R 37.06: Interim distribution of property or income
- Where in a proceeding concerning any property the property will be more than sufficient to answer the claims on the property for which provision ought to be made in the proceeding, the Court—
 - (a) may by order allow the whole or part of the annual income of the property or any part thereof to be paid, during such period as the Court may determine, to all or any of the persons having an interest in the income; or
 - (b) may direct that any part of the property be conveyed, transferred or delivered to any person having an interest in the property.
- R 37.07: Court powers preserved

Order 37A (Freezing orders)

- R 37A.02: Freezing order
- (1) The Court may make an order (a freezing order), upon or without notice to the respondent, for the purpose of preventing the frustration or inhibition of the Court's process by seeking to meet a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied.
- (2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.
- (3) A freezing order may be in Form 37AA.
- (4) In making a freezing order or an ancillary order, the Court shall have regard to the practice note concerning freezing orders.
- (5) The affidavits relied on in support of an application for a freezing order or an ancillary order shall, as far as possible, address the following—
 - (a) information about the judgment that has been obtained, or if no judgment has been obtained, the following information about the cause of action—
 - (i) the basis of the claim for substantive relief;
 - (ii) the amount of the claim; and
 - (iii) if the application is made without notice to the respondent, the applicant's knowledge of any possible defence;
 - (b) the nature and value of the respondent's assets, so far as they are known to the applicant, within and outside Australia;
 - (c) the matters referred to in Rule 37A.05; and
 - (d) the identity of any person, other than the respondent, who the applicant believes may be affected by the freezing order and how that person may be affected by it.

- Cross-ref Supreme Court Practice Note on Freezing Orders
- R 37A.03: Ancillary order
- (1) The Court may make an order (an ancillary order) ancillary to a freezing order or prospective freezing order as the Court considers appropriate.
- (2) Without limiting the generality of paragraph (1), an ancillary order may be made for either or both of the following purposes—
 - (a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;
 - (b) determining whether the freezing order should be made.

- R 37A.04: order may be made, whether or not the respondent is a party to a proceeding in which substantive relief is sought against the respondent
- **R 37A.05: Order against judgment debtor or prospective judgment debtor or third party**
 - (1) This Rule applies if—
 - (a) judgment has been given in favour of an applicant by—
 - (i) the Court; or
 - (ii) in the case of a judgment to which paragraph (2) applies, another court; or
 - (b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—
 - (i) the Court; or
 - (ii) in the case of a cause of action to which paragraph (3) applies, another court.
 - (2) This paragraph applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.
 - (3) This paragraph applies to a cause of action if—
 - (a) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and
 - (b) there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

R 37A.05 cont

- (4) The Court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the Court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied because any of the following might occur—
 - (a) the judgment debtor, prospective judgment debtor or another person absconds; or
 - (b) the assets of the judgment debtor, prospective judgment debtor or another person are—
 - (i) removed from Australia or from a place inside or outside Australia; or
 - (ii) disposed of, dealt with or diminished in value.
- (5) The Court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a third party) if the Court is satisfied, having regard to all the circumstances, that—
 - (a) there is a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied because—
 - (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
 - (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
 - (b) a process in the Court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment of the Court, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.
- (6) Nothing in this Rule affects the power of the Court to make a freezing order or an ancillary order if the Court considers it is in the interests of justice to do so.

R 37A.07: Service

- A freezing order—
 - (a) shall be authenticated pursuant to Rule 60.02(1)(b);
 - (b) when served, shall be served together with a copy of—
 - (i) the summons, or, if none was filed, any draft summons produced to the Court;
 - (ii) the material (other than material excepted by the Court as confidential) that was relied on by the applicant at the hearing when the order was made;
 - (iii) a transcript or, if none is available, a note, of any oral allegation of fact that was made and of any oral submission that was put, to the Court; and
 - (iv) the originating motion, or, if none was filed, any draft originating motion produced to the Court.
- Note
- An application for a freezing order or an ancillary order may be served on a person who is out of Australia where such service is authorised by or under Part 1 of Order 7: see, in particular, Rule 7.02(d).

- R 37A.08 allows for costs orders
- R 37A.09 requires applications under this order to be heard by a Judge of the Court

Order 38: Injunctions

- R 38.01: The Court may grant an injunction at any stage of a proceeding or, in the circumstances referred to in Rule 4.08 [ie an urgent case], before the commencement of a proceeding.
- R 38.02: Application before trial
 - (1) In an urgent case, the Court may grant an injunction on application made without notice.
 - (2) Where a plaintiff applies for an injunction against a defendant, service of notice of application on that defendant may be made at the time of service of originating process in the proceeding.

- R 38.03: Costs and expenses of non-party
- (1) This Rule applies where an application for an injunction is made before the trial of a proceeding.
- (2) The Court may grant an injunction on condition that the party applying for the injunction give security for the costs and expenses of any person who might be affected.
- (3) The Court may make such order as it thinks fit for the payment, either in the first instance or finally, of the costs and expenses of any person not being a party who might be affected by the grant of an injunction.

Order 40: Evidence generally

- R 40.02: Evidence of witness
- Except where otherwise provided by any Act or these Rules, and subject to any agreement between the parties, evidence shall be given—
 - (a) on an interlocutory or other application in any proceeding, by affidavit;
 - (b) at the trial of a proceeding commenced by writ, orally;
 - (c) at the trial of a proceeding commenced by originating motion, by affidavit.

R 40.03: Contrary direction as to evidence

- (1) Notwithstanding Rule 40.02, the Court may order that evidence be given—
 - (a) orally on the hearing of an interlocutory or other application in any proceeding or at the trial of a proceeding commenced by originating motion;
 - (b) by affidavit at the trial of a proceeding commenced by writ.
- (2) Where the Court makes an order under paragraph (1)(a), it may direct that the party on whose application the order is made give such notice as it thinks fit to the other parties of the oral evidence the party proposes to adduce.
- (3) Where the Court makes an order under paragraph (1)(b), it may order that the deponent shall attend at the trial to be examined or that the deponent's attendance be dispensed with.

R 40.04: Examination on affidavit

- Examination on affidavit
- (1) Where an affidavit is filed in any proceeding, the Court—
 - (a) may order that the deponent be examined before the Court; and
 - (b) may order that the deponent attend for that purpose at such time and place as it directs.
- (2) Unless the Court otherwise orders, a party to a proceeding commenced by originating motion on whose behalf an affidavit is filed in the proceeding shall cause the deponent to attend at the trial of the proceeding to be examined if notice that such attendance is required is served on the party by any other party a reasonable time before the commencement of the trial.
- (3) Where a deponent in respect of whom an order is made under paragraph (1) or a notice is served under paragraph (2) does not attend for examination the Court may order that the affidavit be not received into evidence.

R 40.05: Evidence of particular facts

- (1) The Court may order that evidence of any particular fact shall be given at the trial or at any other stage of a proceeding in such manner as it directs.
- (2) Without limiting paragraph (1), the Court may order that evidence of any particular fact be given—
 - (a) by statement on oath of information and belief;
 - (b) by the production of documents or entries in books;
 - (c) by the production of copies of documents or entries in books.

- R 40.05: The Court may, at or before the trial of any proceeding, revoke or vary any order made under Rules 40.03 to 40.05.
- **R 40.07: Deposition as evidence**
- (1) No deposition taken in a proceeding shall be admissible as evidence at the trial of the proceeding unless—
 - (a) the deposition was taken pursuant to an order made under Rule 41.01(1)(a) or (b);
 - (b) either—
 - (i) the person against whom the evidence is offered consents; or
 - (ii) the deponent is dead or is unfit by reason of the deponent's bodily or mental condition to attend the trial and testify as a witness; or
 - (iii) the deponent is out of Victoria and it is not reasonably practicable to secure the deponent's attendance; or
 - (iv) the deponent cannot with reasonable diligence be found; and
 - (c) the party who applies to have the deposition received into evidence has given reasonable notice of the application to the other party.
- (2) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature of that person.
- (3) Unless the Court otherwise orders—
 - (a) evidence of facts within paragraph (1)(b) may be given by affidavit; and
 - (b) the affidavit may be made from belief as to those facts, if the grounds for the belief are given.

- **R 40.08: Proof of Court documents**

- (1) A document purporting to be sealed with the seal of the Court shall be admissible in evidence without further proof.
- (2) An office copy of a document filed in or issued out of the Court shall be admissible in evidence in any proceeding between all parties to the same extent as the original would be admissible.
- (3) A document purporting to be sealed with the seal of the Court and to be a copy of a document filed in or issued out of the Court shall be admissible as an office copy of the latter document without further proof.

- **R 40.09: Evidence of consent**

- The consent of a person to act in a particular capacity, whether as trustee, receiver or otherwise, or to be added as a plaintiff shall be sufficiently evidenced by a written consent signed by that person, dated and verified by the indorsed certificate of a solicitor.
- R 40.10 relates to defamation proceedings where truth not relied upon
- R 40.11: The Court may order that any evidence that has been taken at the trial of a proceeding may be used at any subsequent stage of that proceeding.

R 40.12 Attendance and production

- (1) The Court may in any proceeding make an order for—
 - (a) the attendance of any person for the purpose of being examined;
 - (b) the attendance of any person and production by the person of any document or thing specified or described in the order; or
 - (c) the production by any corporation of any document or thing specified or described in the order.
- (2) An order under paragraph (1) may be made for attendance before or production to the Court or any officer of the Court, examiner, special referee, arbitrator or other person authorised to take evidence.
- (3) An order under paragraph (1) shall not operate to require the person against whom the order is made to produce any document which the person could properly object to produce on the ground of privilege.
- R 40.13 permits a view by a jury