

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

**PRACTICE DIRECTION NO 1 of 2020
ELECTRONIC FILING IN CIVIL PROCEEDINGS
TEMPORARY ARRANGEMENTS**

Part 1 – Application

1. This Practice Direction applies to documents to be filed in the following proceedings:-
 - 1.1 civil proceedings under Chapter 1 of the *Supreme Court Rules* (“*Rules*”);
 - 1.2 appeal proceedings under Chapter 2 of the *Rules* other than a proceeding under Order 86 of the *Rules*;
 - 1.3 proceedings under the *Serious Sex Offenders Act 2013*;
 - 1.4 proceedings in the probate jurisdiction of the Court under Chapter 3 of the *Rules*;
 - 1.5 proceedings under the *Corporations Law Rules 2000*;
 - 1.6 proceedings under the *Legal Profession Act 2006* and the various Rules made thereunder;
 - 1.7 proceedings under the *Criminal Property Forfeiture Act 2002*.

Part 2 – Interpretation

2. In this Practice Direction the following terms have the meanings assigned below unless those meanings are repugnant to the context or subject matter or unless a contrary intention is indicated:-
 - 2.1 “*bookmark*” means a document hyperlink that is connected to another place or page in the document;
 - 2.2 “*electronic court document*” means a document filed electronically pursuant to this Practice Direction;
 - 2.3 “*electronic filing*” means the filing documents in the Court by email;
 - 2.4 “*email address*”, for service, means the email address referred to in rule 6.05 or 20.05 of the *Rules*;

- 2.5 “*fee waiver*” means a waiver, deferral or permission granted under regulation 5 of the Regulations and where the context requires includes an application for a fee waiver;
- 2.6 “*Judge*” includes an Associate Judge of the Court;
- 2.7 “*proper address*”, of a person, means:
- 2.7.1 the person's address for service in the proceeding; or
- 2.7.2 if the person has no address for service when service is to be effected:
- 2.7.2.1 for an individual – the person's usual or last known place of residence or business; or
- 2.7.2.1 for an individual suing or being sued in the name of a firm – the firm's principal or last known place of business; or
- 2.7.2.2 for a corporation – the corporation's registered or principal office;
- 2.8 “*Registrar*” includes, where the context permits or requires, a Proper Officer and Registry staff;
- 2.9 “*Regulations*” means the *Supreme Court Regulations*;
- 2.10 The following terms have the meanings assigned to them in the *Rules*, namely:- “*originating process*”, “*Proper Officer*”, “*corporation*”, “*document*”, “*legal practitioner*”, “*Registrar*” and “*Registry*”.
- 2.11 Other parts of speech and grammatical terms of a word or phrase defined in this Practice Direction have a corresponding meaning;
- 2.12 Words importing the singular include the plural and vice versa;
- 2.13 Words of one gender denote the gender appropriate to the context or subject matter and where the context requires includes the other gender;
- 2.14 A reference to a Person includes a body corporate and a firm;
- 2.15 A reference to an Act or to Regulations refers to that Act or those Regulations as amended from time to time.

Part 3 – Electronic Filing

3. All documents required to be filed in the Court, whether in the Darwin Registry or the Alice Springs Registry, shall be submitted electronically by emailing the document to the Darwin Registry of the Court:-

3.1 in the case of proceedings in the probate jurisdiction of the Court at probateofficer.nt@nt.gov.au; and,

3.2 in all other cases, at NTSC.efile@nt.gov.au,

unless the Court or the Registrar determines that the document may be filed in another way.

4. For electronic filing, a document must:
 - 4.1 be a text searchable PDF, JPEG or TIFF document with no viewing, printing or copying restrictions; and
 - 4.2 be paginated and not more than 25 megabytes in size; and
 - 4.3 except in the case of firstly, an annexure to an affidavit and secondly, a form published by the authority of the Law Society Northern Territory, have double spacing between the lines and a left-hand margin of not less than 40 millimetres; and
 - 4.4 have 300 dots per inch resolution with a black and white setting; and
 - 4.5 not contain a virus or malware.
5. If it is not possible to convert a document to be submitted for electronic filing to PDF, JPEG or TIFF, the person filing the document shall submit the document for electronic filing by such method and in such manner as the Court or the Registrar determines following a request for that purpose by email to NTSC.efile@nt.gov.au.
6. If an electronic court document contains a hyperlink to an external source, the content of the source is not part of the document.
7. Subject to paragraph 8, 9 and 10, a Proper Officer must review a document submitted for electronic filing as soon as practicable after the document is submitted and in the same manner, and applying the same processes and procedures, *mutatis mutandis* as applied in respect of the filing of paper versions of documents immediately before the commencement of this Practice Direction.
8. Subject to the Regulations, a Proper Officer must not review a document which is submitted for electronic filing pursuant to this Practice Direction or allow the document to be filed before any filing fee payable in relation to the document is paid unless a fee waiver is granted for the filing fee.
9. If a filing fee is payable in relation to a document which is submitted, or proposed to be submitted, for electronic filing the person submitting the document must contact the Darwin Registry by telephone on 08 89996574 to complete the payment of fees electronically and/or in such manner and by such method as the Registrar or a Proper Officer directs.

10. A Proper Officer shall not review a document which is the subject of an application for a fee waiver until such time as the fee waiver submitted with respect to that document is determined.
11. Following a review pursuant to paragraph 7 if a Proper Officer finds that a document does not comply with the *Rules* or this Practice Direction, the Proper Officer must:
 - 11.1 by email, notify the person who submitted the document of the defect; or
 - 11.2 refer the document to a Judge or the Registrar for the Judge or Registrar to direct whether the document should be rejected.
12. Following a review pursuant to paragraph 7 if the Proper Officer finds that the document complies with the requirements of the *Rules*, then if the Seal of the Court is required to be affixed to the document, the Proper Officer shall affix the Seal of the Court as well as a lodgement date stamp and the document shall then be deemed to have been filed for the purposes of the *Rules*.
13. Upon a document being filed in accordance with paragraph 12 the Proper Officer shall transmit the document by email to the person who electronically filed the document and the version of the document so transmitted, or a printed paper version of that document containing the Seal of the Court if applicable, and the lodgement date stamp if applicable shall, for all purposes have the same force and effect as a paper version of a document filed in the Registry immediately before the commencement of this Practice Direction *mutatis mutandis*.
14. Subject to the Regulations, if a document is rejected for filing, any filing fee paid in respect of that document must be refunded to the person who paid that filing fee.
15. An electronically filed affidavit which contains annexures must have a bookmark applied to each annexure certificate before it is submitted.
16. A person may sign a document, other than an affidavit, by typing the person's name, or inserting an image of the person's signature, where the signature would otherwise appear in the document.

Part 4 – Service

17. This Part does not apply in respect of any document which is required to be served personally.
19. An electronic court document may be served by serving a true copy of the document, in paper or electronic form, in any of the ways permitted by the *Rules* or any Act or by:-
 - 19.1 by leaving the document or a true copy at the proper address of the person to be served; or
 - 19.2 by sending the document or a true copy by prepaid post to the proper address of the person to be served; or

- 19.3 if provision is made under an Act for service of a document on a corporation (other than a company within the meaning of the Corporations Act 2001) – by serving the document or a true copy in accordance with that provision;
20. A document served in accordance with paragraph 19 is taken to have been served:
- 20.1 if served by email – on the next business day after the day the document was sent unless the serving party receives a delivery failure notification; or
- 20.2 if served by prepaid post, at the time when the document would have been delivered in the ordinary course of post; or
- 20.3 if served by leaving it at a place, on the date that the document is left at the place.
21. Despite paragraph 20, if the Court is satisfied that a person has not received a document, the Court may:
- 21.1 extend the time for the person to take a step in the proceeding; or
- 21.2 grant any other relief that the Court considers appropriate.
22. If this Practice Direction requires or authorises the Court or the Registrar to give any document to a person, the Court or the Registrar may give the document by email to the person.

Part 5 – Probate Proceedings

23. In addition to complying with the requirements under section 149 of the *Administration and Probate Act 1969*, an applicant must also electronically file a true copy of the original will when electronically submitting an application for a grant of probate or letters of administration with the will annexed.
24. 24.1 Despite whether an original will is produced or not produced with an application for a grant of probate or letters of administration with the will annexed, the applicant must file an affidavit of a legal practitioner deposing that the legal practitioner has carefully examined the will and has not detected anything that might indicate any of the following:
- 24.1.1 tampering with the will;
- 24.1.2 an attempt by a testator to vary the will;
- 24.1.3 that the will has otherwise not been validly executed;
- 24.1.4 that the will is not valid;
- 24.1.5 any other matter which requires production of the original will.

- 24.2 Where the applicant is the Public Trustee an affidavit for the purposes of paragraph 24.1 hereof may be provided by an Australian lawyer, within the meaning of that term in section 5 (a) of the *Legal Profession Act 2006*, employed by the Public Trustee.
25. Any notice required to be published under rule 88.09(1) of the *Rules* must be published:
- 25.1 in one Darwin daily newspaper and, if the deceased was resident at the date of the deceased's death in the Territory at a place more than 200 km from the General Post Office, Darwin, also in a newspaper published and circulating in the district where the deceased resided; or
- 25.2 by electronically filing the notice.
26. The Proper Officer must publish any notice filed under paragraph 25.2 on the Court's website as soon as practicable after the notice is filed.
27. In a proceeding for a grant:-
- 27.1 an applicant, other than the Public Trustee or an applicant who applies for a grant by a legal practitioner, must file an affidavit proving the identity of the applicant to the satisfaction of the Court; and
- 27.2 if required by the Court an applicant must file an affidavit proving the identity of the deceased to the satisfaction of the Court;
28. For the purposes of subparagraphs 27.1 and 27.2, the Court may give directions with regard to the mode of proof of identity.

Part 6 – Sundry

29. By electronically filing a document the person submitting the document undertakes that the requirements of this Practice Direction in relation to the document and the electronic filing of the document have been complied with.
30. A party may electronically file a subpoena pursuant to rule 42 of the *Rules* and the issuing officer may electronically issue that subpoena and the provisions of paragraph 7 shall apply mutatis mutandis.
31. If a party is given leave to file a document in Court, the document is filed provisionally on the condition that the party sends a true copy of the document to the Registrar by email within:
- 31.1 the period fixed by the Court for that purpose; or
- 31.2 if no period is fixed by the Court – 3 days after leave is given.

32. The version of a document electronically filed pursuant to this Practice Direction shall, unless the Court otherwise orders, constitute the official Court record which is paramount and takes precedence over any other version of the document.
33. 33.1 The Registrar, or a Proper Officer may, by notice to the person who electronically filed a document, require that person to lodge a paper copy of that document at the Registry within such time as is specified in the notice (being no less than two business days), or if no time is so specified, then within ten business days.
- 33.2 A document filed pursuant to paragraph 33.1 hereof shall comply with all requirements of the *Rules* and all Practice Directions which would otherwise apply in respect of the document if this Practice Direction was not in force.
34. 34.1 Where the Registrar, or a Proper Officer, or any other officer of the Court, receives a delivery failure notification in respect of the electronic transmission of a document due to the failure of, or restrictions or limitations of, the technology systems of the intended recipient of that document, the Registrar or the Proper Officer or other officer of the Court shall, as soon as practicable thereafter, notify that person of that failure, together with brief particulars of the reason for the failure (if known) and a description of the document attempted to be transmitted, and may require that person to provide an alternative means of transmission of that document or to attend at the Registry to collect a paper copy of that document.
- 34.2 Notwithstanding any such failure, unless the Court otherwise orders, the document in respect of which the delivery failure occurred shall be deemed to have been transmitted to that person when it would otherwise have been transmitted had that delivery failure not occurred.

Part 7 – Suspended Rules

33. During the currency of this Practice Direction the following *Rules* are suspended and/or modified as set out hereunder and/or to the extent of any inconsistency with the terms and provisions of this Practice Direction namely:-
- 33.1 Sub-rule 5.07(1) is suspended and the following paragraph shall apply in its place namely:-
- (1) An originating process must be endorsed with:
- (a) the plaintiff's address; and
- (b) if the plaintiff sues in person:
- (i) the plaintiff's email address; and
- (ii) an address in the Territory for service if the plaintiff's address is outside the Territory; and

- (c) if the plaintiff sues by a solicitor:
 - (i) the solicitor's name, or firm, and business address in the Territory; and
 - (ii) the solicitor's email address; and
 - (iii) the name, or firm, and business address of the principal if the solicitor is an agent; and
- (d) the address of each defendant.

33.2 Sub-rules 5.11(1), (4) and (5) are suspended and the following paragraphs shall apply in their place namely:-

- (1) A proceeding shall be commenced by filing the originating process.
- (4) In a proceeding commenced by originating motion, where the relief or remedy sought includes the construction of an instrument other than an Act, a copy of the instrument or, where it exceeds 25 pages, of the relevant parts, must be filed at the time the originating motion is filed.

33.3 Sub-rule 6.06 is suspended.

33.4 Sub-rule 8.06(1) is suspended and the following paragraph shall apply in its place namely:-

- (1) A notice of appearance must state:
 - (a) the defendant's address; and
 - (b) if the defendant appears in person:
 - (i) the defendant's email address; and
 - (ii) an address in the Territory for service if the defendant's address is outside the Territory; and
 - (c) if the defendant appears by a solicitor:
 - (i) the solicitor's name, or firm, and business address in the Territory; and
 - (ii) the solicitor's email address; and
 - (iii) the name, or firm, and business address of the principal if the solicitor is an agent.

33.5 Sub-rule 20.05(1) is suspended and the following paragraph shall apply in its place namely:-

- (1) The address for service of a party:
 - (a) who changes the party's solicitor and files and serves notice under rule 20.01 of the *Rules*, shall be the business or email address of the new solicitor;
 - (b) who appoints a solicitor in the circumstances referred to in rule 20.02 of the *Rules* shall be the business or email address of the solicitor; or
 - (c) for whom a solicitor has ceased to act, where notice is filed and served by the solicitor under rule 20.03 of the *Rules* without leave, shall be the address stated in the notice.

33.6 Sub-rules 27.03(2), 27.03(5), 28.01, 28.02 and 28.03 are suspended.

33.7 Sub-rule 28.04(3) is suspended and the following paragraph shall apply in its place namely:-

- (3) Either of the following is sufficient compliance with a requirement of this Chapter or with an order of the Court that a document or a copy of a document be sealed with the Seal of the Court:
 - (a) marking the document or copy of the document with the Seal of the Court or with a stamp of a design approved by the Chief Justice;
 - (b) for an electronic court document – applying an electronic seal.

33.8 Sub-rule 42.03(4) is suspended and the following paragraph shall apply in its place namely:-

- (4) A subpoena to produce must:
 - (a) identify the document or thing to be produced; and
 - (b) specify the date, time and place for production; and
 - (c) unless an original is required to be produced, require the addressee to produce the document or thing by submitting it by email to NTSC.efile@nt.gov.au before the specified date and time or if that is not practicable, or where an original is required to be produced, by producing it by leaving the document or thing in a receptacle for that purpose at the Registry, or in such other manner as the Court or the Registrar shall direct.

33.9 Sub-rules 42.06(1), (4), (4A) and (4C) are suspended and the following paragraphs shall apply in their place namely:-

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless the person has been provided with a reasonable sum of money for the person's costs, as mentioned in section 194(1)(c) of the *Evidence (National Uniform Legislation) Act 2011*.
- (4) The addressee of a subpoena to produce must comply with the subpoena:
 - (a) unless an original is required to be produced, by submitting it by email to NTSC.efile@nt.gov.au or if that is not practicable, or where an original is required to be produced, by producing it by leaving the document or thing in a receptacle maintained for that purpose at the Registry, or in such other manner as the Court or the Registrar shall direct:
 - (i) before the date and time specified in the subpoena; or
 - (ii) if the addressee has received notice of the later date and time from the issuing party - before the later date and time.
 - (b) by delivering or sending the subpoena or a copy of it and the document or thing into a receptacle maintained for that purpose at the Registry, so they are received not less than 2 clear days before the date specified in the subpoena for production or, if the addressee has received notice of a later date from the issuing party, before the later date;
- (4A) The addressee must also complete the notice and declaration mentioned in rule 42.05(1A) of the *Rules* and attach it to, or submit or email it with, the subpoena or copy of the subpoena that accompanies the document or thing produced to the Court under the subpoena.
- (4C) A copy of a document shall be in an electronic format or if that is not practicable, a photocopy.

33.10 Sub-rules 42.09(1) and (4) are suspended and the following paragraphs shall apply in their place namely:-

- (1) This rule applies if an addressee produces a document or thing in accordance with rule 42.06(4)(b) or (c) of the *Rules*.
- (4) Unless the Court otherwise orders, the Registrar may permit the parties to inspect any document or thing produced by emailing it to the parties, unless the addressee, a party or any person having sufficient interest objects to the inspection under this rule.

33.11 Sub-rules 42.10(3) and (4) are suspended and the following paragraphs shall apply in their place namely:-

- (3) Subject to subparagraph (4), the Registrar may, 4 months after the conclusion of the proceeding, destroy or delete all documents that were:
 - (a) produced in the proceeding in compliance with a subpoena; and
 - (b) declared by the addressee under rule 42.06(4A) of the *Rules* to be copies.
- (4) The Registrar may, when they are no longer required in connection with the proceeding, including on any appeal, destroy or delete those documents that:
 - (a) have become exhibits in the proceeding; and
 - (b) were declared by the addressee under rule 42.06(4A) of the *Rules* to be copies.
- 33.12 Sub-rule 48.05(2) is suspended and the following paragraph shall apply in its place namely:
 - (2) A notice under sub-rule 48.05(1) of the *Rules* may be given to a party in accordance with any method under paragraph 19 of this Practice Direction.
- 33.13 Sub-rule 88.12 is suspended.
- 33.14 Sub-paragraphs (a) and (b) Part B and Part C of Form 42A are suspended and the following paragraph shall apply in its place namely:-
 - (b) if you are not required to produce an original document – by submitting a copy of the subpoena and documents by email to NTSC.efile@nt.gov.au before the date and time specified for attendance and production (see notes 5 – 9A), or where that is not practicable or where you are required to produce an original document, by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below in to a receptacle maintained for that purpose at the Registry, or in such other manner as the Court or the Registrar shall direct and in each case so that they are received not less than 2 clear days before the date specified for attendance and production;
- 33.15 Subparagraph 9A(b) of the Notes to Form 42A is suspended and the following paragraph shall apply in its place namely:-
 - (b) in electronic format.
- 33.16 The third paragraph of Form 42B is suspended and the following paragraph shall apply in its place namely:-

You must complete the Declaration below, attach it to, or submit or email it with, the subpoena or a copy of the subpoena and return them with the documents or things you produce to the Court under the subpoena.

33.17 Subparagraph 9A(b) of the Notes to the Schedule to Form 42A is suspended and the following subparagraph shall apply in its place namely:-

(b) in electronic format.

33.18 Subparagraph (b) of the second paragraph of Form 42B is suspended and the following subparagraph shall apply in its place namely:-

(b) in electronic format.

33.19 The third paragraph of Form 42B is suspended and the following subparagraph shall apply in its place namely:-

You must complete the Declaration below, attach it to, or submit or email it with, the subpoena or a copy of the subpoena and return them with the documents or things you produce to the Court under the subpoena.

Dated: 5 June 2020

Chief Justice