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RULES UNDER THE INEBRIATES ACT 1928.

IN pursuance of the powers conferred upon the Judges of the Supreme Court, the following Rules are made:—

1. These Rules may be cited as the "Inebriates Rules 1951." Citation.
2. (1) On and after the publication of these Rules in the *Government Gazette*, the Rules of 1916 made under the *Inebriates Act 1915*, and any Rules amending the same, shall be repealed. Repeal.  
 (2) Notwithstanding such repeal, the said Rules shall continue to apply to all matters then pending. Saving.  
 (3) On the publication of the Rules in the *Government Gazette*, these Rules shall come into force and shall apply to all matters commenced on or after that date. Commencement.
3. In these Rules— Definitions.  
 "Master" means the Master of the Supreme Court.  
 "Inspector" means the Inspector of Inebriates' Institutions.  
 "Magistrate" means stipendiary magistrate.  
 "The Act" means the *Inebriates Act 1928* and any Act amending the same.

MODE OF APPLICATION.

4. All applications to a Judge or magistrate under the Act shall, unless otherwise provided by these Rules, be made by summons in Chambers, according to the practice and procedure of the Supreme Court, the County Court, or Court of Petty Sessions, as may be appropriate. Summons in Chambers.
5. All applications to the Master shall, and applications to a Judge of the County Court may, unless otherwise provided by these Rules, be made by summons issued by the Master according to the practice and procedure of the Supreme Court or County Court respectively. Summons by Master.
6. All applications shall, unless otherwise provided by these Rules, be supported by an affidavit or affidavits of the facts relied upon, to be filed at the time of the issuing of the summons. Affidavits in applications before the Master shall be filed in the office of the Supreme Court. Affidavit in support.
7. Every summons shall be served at least four clear days before the date fixed for the hearing of the application, and shall be accompanied by a copy or copies of the affidavit or affidavits and of the medical certificate (if any) filed in support. Service of a summons shall be effected by delivering a copy thereof to the person to be served and producing the original thereof at the time of such delivery. After service, a memorandum thereof shall be indorsed on the original summons by the person serving the same, and such summons so indorsed shall then be filed in the appropriate Court. Service.

Application  
in camera.

8. All applications under the Act shall be heard in camera, unless otherwise ordered.

#### APPLICATIONS UNDER SECTION 4.

In certain  
cases no  
summons or  
affidavits.

9. Where an application is made under section 4 by an inebriate or any person authorized in accordance with that section on his behalf, there shall be no summons, and unless the Judge, Master, or magistrate otherwise orders, no affidavit need be sworn or filed.

Evidence on  
application  
under  
section 4.

10. (1) Every other application under section 4 shall be supported by—

- (a) an affidavit of the applicant showing compliance with paragraph (b) or paragraph (c) of sub-section (1) of section 4; and
- (b) affidavits of members of the family or other persons to whom the alleged inebriate is known, corroborating the certificate of the medical practitioner (Form B) required by paragraph (g) of sub-section (1) of section 4, and deposing to such other particulars as may be deemed material; and
- (c) where the application is for an order under paragraph (d) of sub-section (1) of section 4 that the inebriate be placed under the care and control of some person or persons to be named in such order, the following additional evidence—
  - (i) the written consent of such person or persons to act;
  - (ii) evidence by affidavit of the fitness of such person or persons; and
  - (iii) where it is proposed to place the inebriate under control in the house of a friend, the written consent of such friend.

(2) On the return of the summons the Judge, Master, or magistrate may, if he thinks fit, make an order appointing a guardian *ad litem* to the inebriate and adjourn the application. The applicant shall thereupon cause a copy of the order and of the summons and copies of the affidavit or affidavits filed in support and of the medical certificate to be served upon the guardian *ad litem* and a memorandum of service thereof made in accordance with the requirements of Rule 7 of these Rules. It shall be the duty of the guardian *ad litem* to investigate as fully as possible all the circumstances of the inebriate material to the application with a view to safeguarding the interests of the inebriate and if required to report to the Court the result of his investigation. In particular it shall be his duty to include in his investigation the question whether the inebriate is able to comprehend the nature of the application and the effect of any order made thereon.

Service of  
summons  
under  
section 4.

11. Every summons for an order under section 4 shall, together with copies of the affidavits and medical certificate, be served upon the alleged inebriate.

#### ORDERS UNDER SECTION 5.

Service on  
inebriate  
of orders  
under  
section 5.

12. Where an interim order is made under section 5, a copy of the order shall be served upon the alleged inebriate at the time of service of the documents required by Rule 11 to be served upon him.

#### APPLICATIONS UNDER SECTIONS 7 AND 10.

Applications  
for  
extension,  
directions, &c.

13. Upon any application for the extension of the period of detention of an inebriate under section 7, or for an order under section 10, the summons and a copy of the affidavit or affidavits shall, unless the application is made by the inebriate, be served upon the inebriate. If it is necessary to do so in order to secure the attendance of the inebriate at the hearing of the application, the Judge, Master, or magistrate (as the case may be) may make an order for the purpose in accordance with Form E or to the like effect.

#### APPLICATIONS UNDER SECTION 8.

Evidence  
in support of  
applications  
under  
section 8.

14. Upon every application for an order under section 8 the affidavits in support thereof shall state the following particulars:—

- (a) The age, position in life, and residence of the inebriate.
- (b) The nature and extent of his property, and the amount of his income.
- (c) The persons dependent upon him for support.

## APPLICATIONS UNDER SECTION 9.

15. Applications under section 9 shall, unless otherwise ordered, be made by summons to be served upon all persons interested in such application.

Applications under section 9 by summons.

16. Every such summons shall state concisely the facts relied upon, and also, in general terms, the nature and value of the property of the inebriate and who are his kindred and nearest relatives so far as known.

Contents of summons.

17. Every such summons shall have indorsed upon it a notice in the Form F.

Indorsement on summons.

18. Every such summons shall be supported by affidavits verifying the statements therein, including the affidavit of at least one legally qualified medical practitioner, and affidavits of members of the inebriate's family or other persons to whom the inebriate is known. A copy of the order previously made shall be filed, unless such order shall have been made by a Judge of the Supreme Court.

Affidavit or affidavits in support.

19. Such summons (indorsed as herein directed) and copies of the affidavits filed in support thereof shall be served on the inebriate ten clear days at least before the hearing of the application.

Service of summons.

20. If the inebriate shall intend to object to an order being made, he shall file a notice of his objection with the Prothonotary within seven days after service of the summons upon him.

Notice of objection by inebriate.

## VISITING AN INEBRIATE.

21. A Judge of the Supreme Court or the Master may, by special order or orders—

Order as to visiting inebriate.

- (a) direct the Inspector, or such person as he may depute, to visit any inebriate being the subject of an order under this Act, and to report to the Master upon the health and general condition of the said inebriate;
- (b) direct that any fees and expenses connected with such visit be paid out of the estate of such inebriate;
- (c) assess the amount of such fees and expenses.

## MISCELLANEOUS.

22. No order made under sections 4, 7, or 10 shall be delivered to the applicant therefor until he shall have filed an office copy thereof in the office of the Court in which such order shall have been made. Where the order has been made by a Judge of the Supreme Court or the Master, the copy shall be filed in the office of the Prothonotary of the Supreme Court. Where the order has been made by a County Court Judge or a magistrate, the principal officer of the Court concerned shall forthwith transmit such office copy to the Prothonotary. All documents filed under these Rules shall be confidential. The Prothonotary shall keep such documents in a special place of security, and they shall not be produced to any person save in accordance with the order or direction of a Judge.

Office copy of order to be deposited and in certain cases transmitted.

23. The Judge, Master, or magistrate before whom an application is made may enlarge or abridge the times appointed by these Rules. Time may be enlarged notwithstanding that it has already expired.

Enlargement or abridgment of time.

24. (1) Where an application is supported by affidavits evidence in reply shall, subject to sub-clause (2) hereof, be given by affidavit served and filed before the hearing.

Evidence in reply.

(2) By permission of the Judge, Master, or magistrate before whom the application is made the whole or part of the evidence in reply may be given orally.

25. Either party may, by leave of the Judge, Master, or magistrate before whom the application is made, make, serve, and file affidavits in answer to the affidavits of the opposite party upon any new matter in such affidavits.

Affidavits in answer.

26. Every person may be cross-examined upon his affidavit or certificate at the hearing of any application on which his affidavit or certificate is used; and at such hearing the Judge, Master, or magistrate presiding may receive or require oral evidence, or such other proof as he may deem necessary.

Cross-examination.

Application  
of Court  
Rules practice  
and  
procedure.

27. Where none of these Rules shall be applicable, or so far as they may be insufficient, the Rules, practice, and procedure of the Supreme Court, the County Court, or Court of Petty Sessions (as may be appropriate) shall be followed so far as circumstances will admit:

Provided that—

- (a) for the purpose of this Rule applications before the Master shall be taken to be made in the Supreme Court;
- (b) in all applications to a Judge of the Supreme Court or to the Master, where no provision is made by these Rules, the Rules, practice, and procedure of the Supreme Court in Lunacy, and the forms used therein, shall be followed as far as circumstances will admit, and failing those, the Rules, practice, and procedure of the Supreme Court in civil proceedings.

Forms.

28. The Forms set out in the Appendix hereto may be used, with such variations as the circumstances may require.

APPENDIX

"A."

SUMMONS.

In the matter of A.B., of \_\_\_\_\_, an alleged inebriate;  
and in the matter of the *Inebriates Act 1928*.

Let all parties concerned attend at the Chambers of  
at \_\_\_\_\_ on the \_\_\_\_\_  
day of \_\_\_\_\_ next at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon,  
or so soon thereafter as this matter can be heard, on the hearing of an  
application on the part of \_\_\_\_\_ upon  
the grounds appearing in the affidavits of \_\_\_\_\_  
filed in support of this application, and copies whereof are served herewith.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

A Justice of the Supreme Court  
(or, as the case may be).

To  
This summons was taken out by C.D. of  
solicitor for the above-named applicant (or the applicant).

"B."

MEDICAL CERTIFICATE.

I, the undersigned, being a legally qualified medical practitioner, hereby  
certify that I, on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
at \_\_\_\_\_ personally examined A.B.  
of \_\_\_\_\_ and that the said A.B. is an  
inebriate as defined by the *Inebriates Act 1928*, and that I have formed  
this opinion upon the following grounds:—

- (1) Facts indicating inebriety observed by myself—
- (2) Other facts, if any, indicating inebriety and communicated to me  
by others—

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

(Signed)  
Address

"C."

ORDER FOR APPOINTMENT OF PERSON TO INSPECT THE ALLEGED  
INEBRIATE AND REPORT.

In the matter of A.B., of \_\_\_\_\_, an alleged inebriate, and in the  
matter of the *Inebriates Act 1928*.

Whereas H.M., the mother (or, as the case may be) of the above-named  
A.B. has taken out a summons in this matter and has applied for an order  
that

Now, upon reading the said summons and the certificate of J.K., a legally  
qualified medical practitioner, filed herein, and the affidavit of the said H.M.,  
filed herein, corroborating the said certificate, and the affidavit of L.M., and  
the affidavit of I.G. of the service of the said summons and of the said  
certificate and affidavits on the said A.B. on the \_\_\_\_\_ day  
of \_\_\_\_\_ I do appoint and order that  
do visit and examine the said A.B., and report as to whether the said A.B.  
is an inebriate as alleged.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
(Signed)

"D."

REPORT.

In the matter of A.B., of \_\_\_\_\_, an alleged inebriate, and in the matter of the *Inebriates Act 1928*.

In pursuance of the order of \_\_\_\_\_ dated \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ last, I visited \_\_\_\_\_ and there saw and personally examined the above-named A.B. on the \_\_\_\_\_ day of \_\_\_\_\_ last, and I do report that the said A.B. is (or, is not) an inebriate, and is (or, is not) incapable of properly understanding or managing his affairs; and that (add any further facts which it is desired to report).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
(Signed)

"E."

ORDER FOR SECURING ATTENDANCE OF INEBRIATE AT HEARING OF APPLICATION UNDER SECTION 7 OR SECTION 10.

In the matter of A.B., of \_\_\_\_\_, and in the matter of the *Inebriates Act 1928*.

To (insert name or names of person or persons, or title of chief officer of institution, or name or names of attendant or attendants, having the care, custody, or charge of the inebriate).

It is hereby ordered under the provisions of Rule 13 of the *Inebriates Rules 1951*, that \_\_\_\_\_ a person now in your care, custody, or charge at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the hearing of an application under section \_\_\_\_\_ of the said Act (state particulars of application) \_\_\_\_\_ and the said \_\_\_\_\_ is to remain in the care, custody, or charge of \_\_\_\_\_ and any person acting under this order pending the determination of the said application.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
(Signed)

"F."

NOTICE TO BE INDORSED ON SUMMONS UNDER SECTION 9.

To the within-named A.B.

Take notice that an application will be made to the Supreme Court, or a Judge thereof, in the Practice Court, Law Courts, Melbourne, on behalf of the within-named applicant, on the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, or so soon thereafter as the matter can be heard, for an order as prayed by the within summons, on the ground that you are incapable of managing your affairs, pursuant to section 9 of the *Inebriates Act 1928*.

The following is a copy of such section:—  
(Copy section 9.)

And take notice that if you intend to object to such order being made, notice of such objection must be signed by you and filed with the Master of the Supreme Court within seven days after your receipt of this notice.

"G."

ORDER UNDER SECTION 4, ON APPLICATION OF INEBRIATE OR PERSON AUTHORIZED BY HIM.

In the matter of A.B., of \_\_\_\_\_, and in the matter of the *Inebriates Act 1928*.

To (insert name or names of person or persons named under section 4 (1) (d), or title of chief officer of institution named under section 4 (1) (e), or name or names of attendant or attendants named under section 4 (1) (f)).

Whereas the said A.B. (or, X.Y., a person authorized in writing on behalf of the said A.B. the said A.B. being at the time sober and fully understanding the nature and effect of such authorization of which I am satisfied) has applied to me that he (she) be placed (state nature of application): And whereas upon hearing the said \_\_\_\_\_ and upon reading the certificate of \_\_\_\_\_ a legally qualified medical practitioner in support of the application for the order herein, duly filed (add, if the application is by a person authorized, and upon reading (or upon hearing) the following evidence, viz., \_\_\_\_\_) and having made a personal inspection of the said A.B. (or, as the case may be) I am satisfied that the said A.B. is an inebriate within the meaning of the *Inebriates Act 1928*.

Now therefore I do, in pursuance of the powers conferred by the *Inebriates Act 1928*, hereby order that the said A.B. be placed (state nature of order) for the period of \_\_\_\_\_ months.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
(Signed)

"H."

ORDER UNDER SECTION 4, ON APPLICATION UNDER SECTION 4 (1) (b) OR (c).

In the matter of A.B., of

, and in the matter of the *Inebriates Act 1928*.

To (insert name or names of person or persons named under section 4 (1) (d), or title of chief officer of institution named under section 4 (1) (e), or name or names of attendant or attendants named under section 4 (1) (f)).

Whereas upon application by H.M. (state the matters showing compliance with section 4 (1) (b) or (c)) I did summon the said A.B. to appear before me at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, to show cause why he (she) should not be placed (state effect of application) pursuant to the provisions of section 4 of the said Act.

And whereas J.K., a legally qualified medical practitioner, has certified that the said A.B. is an inebriate as defined by the *Inebriates Act 1928*, and his certificate having been produced to me, and upon hearing (or, upon reading) the evidence of H.M. and L.M. in support of the application, and giving the said A.B. an opportunity of being heard in objection to the application, I am satisfied, after personal inspection of the said A.B. (or as the case may be) that he (she) is an inebriate within the meaning of the said Act.

Now therefore I do, in pursuance of the powers conferred by the *Inebriates Act 1928*, hereby order that the said A.B. be placed (state nature of order) for the period of \_\_\_\_\_ months.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
(Signed)

"I."

INTERIM ORDER UNDER SECTION 5.

In the matter of A.B., of

, and in the matter of the *Inebriates Act 1928*.

To (insert name or names of person or persons named under section 4 (1) (d), or title of chief officer of institution named under section 4 (1) (e), or name or names of attendant or attendants named under section 4 (1) (f)).

Whereas upon the application of H.M. (state the matters showing compliance with section 4 (1) (b) or (c)) I am issuing a summons to the said A.B. to appear before me at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ (being a date not more than seven days from the date of this order) at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon to show cause why he (she) should not be placed (state effect of application) pursuant to the provisions of section 4 of the said Act: And whereas upon application being made by the said H.M. and upon reading the affidavits of H.M. and L.M. and the medical certificate of J.K., a legally qualified medical practitioner filed herein, I am satisfied that the said A.B. is an inebriate and that it is expedient for the safety (or, welfare) of the said A.B. (or, for the protection of others) that the said A.B. should be detained in custody pending the hearing of the application.

Now therefore I do, in pursuance of the powers conferred by the *Inebriates Act 1928*, hereby order that the said A.B. be placed until the hearing of the application (state nature of order) and that you, the said (name of person or persons named under section 5 (1)) receive into your care the said A.B. and him (her) safely keep until the above-mentioned date, and I further order that he (she) be brought before me on the said date for the hearing of the application (add any directions under section 5 (3)).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
(Signed)

Dated the 19th day of February, 1951.

CHARLES J. LOWE, A-C.J.

RUSSELL MARTIN, J.

NORMAN O'BRYAN, J.

JOHN V. BARRY, J.

ARTHUR DEAN, J.

R. R. SHOLL, J.

T. W. SMITH, J.

E. G. COPPEL, A/J.

E. H. HUDSON, A/J.

Judges' Chambers, Melbourne.