Western Australia

Rules of the Supreme Court 1971

Compare between:

[26 Mar 2024, 09-ai0-00] and [09 Apr 2024, 09-aj0-00]

Rules of the Supreme Court 1971

Order 1 — Application, elimination of delay and forms

[Heading inserted: Gazette 26 Mar 1993 p. 1840.]

1. Short title

These rules may be cited as the *Rules of the Supreme Court 1971*.

2. Commencement and saving

(1) These rules shall take effect on 14 February 1972.

[(2) deleted]

(3) A proceeding pending, and a judgment, decree or order given or made before the commencement of these rules, being of a kind to which these rules apply, shall be treated as if pending, given or made under these rules, and may be proceeded with, enforced, varied, reversed or otherwise dealt with accordingly, subject to any special order or direction made or given by the Court in any particular case.

[Rule 2 amended: Gazette 21 Feb 2007 p. 533; 22 Feb 2008 p. 634.]

3. Certain proceedings excluded

(1) Subject to the provisions of this Order, these rules shall have effect in relation to all proceedings in the Supreme Court.

(2) These rules shall not have effect in relation to proceedings of the kinds specified in the first column of the following Table (being proceedings in respect of which rules may be made under the enactments specified in the 2nd column of that Table) —

Table

	Proceedings	**Enactments**
[1.	*deleted]*	
2.	Non-contentious or common form probate business.	*Administration Act 1903*, s. 144. *Supreme Court Act 1935*, s. 167. *Public Trustee Act 1941*, s. 65.
[3.	*deleted]*	
4.	Proceedings in the Court of Disputed Returns to which the *Electoral Rules 1908* [1] apply.	*Electoral Act 1907*, s. 173.

(3) These rules, save as expressly provided, shall not apply to —

(a) any criminal proceedings;

[(b) deleted]

(c) matters of practice or procedure or other matters to which rules of court made pursuant to a power conferred by any Act of the Commonwealth, apply.

(4) In the case of proceedings mentioned in subrules (2) and (3), nothing in those subrules shall be taken as affecting any provision of any rules (whether made under the Act or any other

Act) by virtue of which the rules of the Supreme Court or any provisions thereof are applied in relation to any of those proceedings.

[Rule 3 amended: Gazette 10 Sep 1973 p. 3428; 28 Jun 1994 p. 3049; 8 May 2000 p. 2161; 29 Dec 2000 p. 7918; 27 Jul 2001 p. 3895; 21 Feb 2007 p. 533; 28 Jun 2011 p. 2552-3.]

3A. Inherent powers not affected

The inherent power of the Court to control the conduct of a proceeding is not affected by these rules.

[Rule 3A inserted: Gazette 28 Oct 1996 p. 5673.]

4. Terms used

(1) In these rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely —

Accountant means the chief finance officer, designated under the *Financial Management Act 2006* section 57, of the department of the Public Service principally assisting in the administration of the Act;

Act means the *Supreme Court Act 1935*;

Australian diplomatic or consular agent includes a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside Australia —

(a) ambassador; and

(b) high commissioner; and

(c) minister; and

(d) head of mission; and

(e) commissioner; and

(f) chargé d’affaires; and

(g) counsellor, secretary or attaché at an embassy, high commissioner's office, legation or other post; and

(h) consul-general; and

(i) consul; and

(j) vice-consul; and

(k) trade commissioner; and

(l) consular agent;

authorised user, of the ECMS, means a person who is registered with the Court to send documents to the Court, and to receive documents from the Court, by means of the ECMS;

case manager has the meaning given in Order 4A rule 1;

Cause Book means the book kept in the Central Office, in the manner directed by the Chief Justice from time to time, in which the number of and other details relating to a cause or matter are recorded;

Central Office means the central office of the Supreme Court at Perth;

consular agent means a consul-general, consul, vice-consul, pro-consul or consular agent, or acting consul-general, acting consul, acting vice-consul, acting pro-consul, or acting consular agent;

Convention country means a country, other than Australia, that is a party to the Hague Convention;

costs includes fees to counsel, charges, disbursements, expenses and remuneration;

Court includes any officer of the Court exercising powers of the Court delegated to the officer by these rules;

diplomatic agent means an ambassador, envoy, minister, chargé d'affaires, or secretary of an embassy or a legation;

ECMS means the electronic case management system for the management of proceedings in Western Australian courts and tribunals;

file, in relation to a document, means to comply with Order 67A in relation to the document;

file electronically, in relation to a document, means file the document under Order 67A using the ECMS;

filed document means —

(a) a document that —

(i) has been filed with the Court; and

(ii) has not been refused by the Court; and

(iii) has been officially recorded by the Court as having been filed;

and

(b) any other document officially recorded by the Court as being a filed document;

folio means 72 words, each figure being counted as one word;

form has a meaning affected by rule 6 and, if followed by a number, means the form of that number in Schedule 2;

geographical address of a person, has the meaning given by Order 71A rule 2;

Hague Convention means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965;

master means a master of the Supreme Court, and includes an acting master;

mortgage action has the meaning given in Order 4AA rule 1(1);

officer means an officer of the Supreme Court;

originating summons means every summons other than a summons in a pending cause or matter;

prescribed fee means the fee prescribed by the *Supreme Court (Fees) Regulations 2002*;

probate action has the meaning assigned to it by Order 73;

proper officer shall mean an officer to be ascertained as follows:

(a) where any duty to be discharged under any Act or these rules is a duty which has heretofore been discharged by any officer, such officer shall unless otherwise provided by these rules continue to be the proper officer to discharge the same;

(b) where under any Act or these rules any new duty is to be discharged, the proper officer to discharge the same shall be the officer directed by these rules, or if no such officer, such other officer as may from time to time be directed by the Chief Justice to discharge the same;

(c) when any doubt arises as to who is the proper officer to discharge any duty the Chief Justice may direct by what officer such duty is to be discharged;

receiver includes a manager or consignee;

registrar means a person for the time being holding or acting in an office designated under the *Supreme Court Act 1935*, "Registrar of the Supreme Court", and a reference to the registrar or to a registrar may include a reference to the Principal Registrar or a deputy registrar;

rules, ***these rules*** or ***rules of court*** means these rules, and includes —

(a) any forms, fees and costs referred to in these rules; and

(b) any other rules of court, forms, fees and costs made or prescribed in amendment of, or in addition to, these rules;

service details of a person, has the meaning given by Order 71A rule 3;

taxing officer includes a registrar, and any other officer of the Court having power to tax costs;

trial includes hearing;

working day means a day other than a Saturday, a Sunday, or a public holiday throughout the State;

writ means a writ of summons.

[(2) deleted]

[Rule 4 amended: Gazette 14 Dec 1979 p. 3869; 30 Nov 1984 p. 3951-2; 28 Oct 1996 p. 5674; 19 Apr 2005 p. 1298; 21 Feb 2007 p. 533-4; 3 Jul 2009 p. 2699; 28 Jul 2010 p. 3440 and 3482; 28 Jun 2011 p. 2551; 16 Nov 2016 p. 5185; 16 Aug 2017 p. 4392; 27 Feb 2018 p. 551-2; 31 Dec 2019 p. 4677; SL 2022/74 r. 10; SL 2024/38 r. 4.]

4A. Delays, elimination of

The practice, procedure and interlocutory processes of the Court shall have as their goal the elimination of any lapse of time from the date of initiation of proceedings to their final determination beyond that reasonably required for interlocutory activities essential to the fair and just determination of the issues bona fide in contention between the parties and the preparation of the case for trial.

[Rule 4A inserted: Gazette 26 Mar 1993 p. 1840.]

4B. Case flow management, use and objects of

(1) Actions, causes and matters in the Court will, to the extent that the resources of the Court permit, be managed and supervised in accordance with a system of positive case flow management with the objects of —

(a) promoting the just determination of litigation; and

(b) disposing efficiently of the business of the Court; and

(c) maximising the efficient use of available judicial and administrative resources; and

(d) facilitating the timely disposal of business; and

(e) ensuring the procedure applicable, and the costs of the procedure to the parties and the State, are proportionate

to the value, importance and complexity of the subject matter in dispute; and

(f) that the procedure applicable, and the costs of the procedure to the parties, are proportionate to the financial position of each party.

(2) These rules are to be construed and applied and the processes and procedures of the Court conducted so as best to ensure the attainment of the objects referred to in subrule (1).

[Rule 4B inserted: Gazette 26 Mar 1993 p. 1840-1; amended: Gazette 28 Jul 2010 p. 3440; 28 Jun 2011 p. 2552.]

4C. Parties to notify settlement

When any cause or matter is disposed of in whole or in part by settlement the solicitors for the parties to the settlement shall notify the Principal Registrar in writing forthwith.

[Rule 4C inserted: Gazette 26 Mar 1993 p. 1841; amended: Gazette 12 Jun 2012 p. 2445.]

*[**5.** Deleted: Gazette 28 Jun 2011 p. 2551.]*

6. Forms

(1) The forms in Schedule 2 shall be used where applicable with such variations as the circumstances of the particular case require, and the reference to any form in or at the end of any rule shall be read as referring to the appropriate Form in Schedule 2 and as a direction to use that Form for the purpose indicated by the rule.

[(2) deleted]

[Rule 6 amended: Gazette 30 Nov 1984 p. 3952; 22 Feb 2008 p. 634; 28 Jun 2011 p. 2553.]

6A. Forms under *Restraining Orders Act 1997*

(1) For the purposes of the *Restraining Orders Act 1997*, the forms set out in the *Magistrates Court (Civil Proceedings) Rules 2005* Schedule 1, as in force on 25 November 2017, are prescribed (with any necessary changes) in relation to the matters specified in those forms.

(2) Where a form is in parts, then only those parts of the form that are relevant, taking into account the part heading, need be used for a particular copy of the form, or for a particular purpose.

[Rule 6A inserted: Gazette 30 Jun 2017 p. 3576; amended: Gazette 1 Dec 2017 p. 5733.]

7. Court fees

These rules are to be read with but do not affect the operation of the *Supreme Court (Fees) Regulations 2002*.

[Rule 7 inserted: Gazette 28 Jul 2010 p. 3482.]

8. Documents given to authorised users or Court by means of ECMS

(1) If —

(a) these rules provide that the Court is required or authorised to give any writ, notice, order, summons or other document to a person; and

(b) the person is an authorised user of the ECMS,

the Court may give the document to the person by means of the ECMS.

(2) If —

(a) these rules provide that a person is required or authorised to give a document to the Court; and

(b) the person is an authorised user of the ECMS,

the person may give the document to the Court only by filing the document electronically unless these rules provide otherwise in respect of the document.

[Rule 8 inserted: Gazette 27 Feb 2018 p. 552-3; amended: Gazette 31 Dec 2019 p. 4677-8.]

Order 2 — Effect of non-compliance

1. Non-compliance with rules

(1) Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to subrule (3) the Court may, on the ground that there has been such a failure as is mentioned in subrule (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings, or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

[Rule 1 amended: Gazette 28 Jun 2011 p. 2552.]

2. Application to set aside for irregularity

(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule shall be made by summons or motion, as the case may require, and the grounds of objection must be stated in the summons or notice of motion.

Order 3 — Time

1. Term used: month

Without prejudice to the definition of the word ***month*** in section 5 of the *Interpretation Act 1984*, in its application to these rules, the word ***month*** where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Supreme Court, means a calendar month unless the context otherwise requires.

[Rule 1 amended: Gazette 29 Apr 2005 p. 1791.]

2. Reckoning periods of time

(1) Where clear days are prescribed by these rules or fixed by any judgment, order or direction, the time shall be reckoned exclusively of the first and last day. Where any number of days not expressed to be clear days is prescribed or fixed the time shall be reckoned exclusively of the first and inclusively of the last day.

(2) Where less than 7 days is prescribed by these rules or limited by any judgment, order or direction for doing any act any day on which the Central Office is closed for business shall not be reckoned.

3. Period between 24 Dec and 15 Jan excluded when computing time

In the computation of the time prescribed by these rules or by an order or direction for filing, serving or amending any pleading or for filing and serving any notice of appeal the period or any part of the period which is between 24 December and 15 January next following shall not be reckoned unless the Court orders.

[Rule 3 amended: Gazette 9 Nov 1973 p. 4164.]

4. Time expiring on day Central Office closed, effect of

(1) Where the time prescribed by these rules or by any judgment, order or direction for doing any act expires on a day on which the Central Office is closed, and by reason thereof such act cannot be done on that day, the time shall be extended to the day on which the Central Office shall next be open.

(2) Subrule (1) does not apply to the filing of a document on a day on which the Central Office is closed if the document is required by these rules to be filed electronically.

[Rule 4 amended: Gazette 27 Feb 2018 p. 553.]

5. Extending and abridging time

(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these rules, or by any judgment, order, or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in subrule (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

[Rule 5 amended: Gazette 29 Apr 2005 p. 1791; 28 Jun 2011 p. 2552.]

6. Extension of time where security ordered

Where any security is ordered to be given by a party the time prescribed by these rules or fixed by any order for the taking of any step by another party contingent on due compliance with the order for security, shall be deemed to be extended by the period between service of the order for security, and the giving of security.

7. Notice of intention to proceed after year's delay

Where a year or more has elapsed since the last proceeding in an action, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed. A summons on which no order was made is not a proceeding for the purpose of this rule.

*[**8.** Deleted: Gazette 20 Jun 1986 p. 2040.]*

Order 4A — Case management

[Heading inserted: Gazette 28 Jul 2010 p. 3441.]

Division 1 — Preliminary matters

[Heading inserted: Gazette 28 Jul 2010 p. 3441.]

1. Terms used

In this Order, unless the contrary intention appears —

approved mediator means a registrar or other person, approved as a mediator by the Chief Justice;

case means any action, cause or matter in the General Division of the Court;

case management direction has the meaning given in rule 2;

case manager means a judge, master or registrar to whom the case is assigned;

CMC List means the Commercial and Managed Cases List referred to in Division 3;

CMC List case means a case that is on the CMC List;

enforcement order has the meaning given in rule 3.

[Rule 1 inserted: Gazette 28 Jul 2010 p. 3441; amended: Gazette 16 Aug 2017 p. 4392.]

2. Term used: case management direction

(1) A case management direction is any procedural direction that in the Court's opinion it is just to make in a case to facilitate the attainment of the objects referred to in Order 1 rule 4B(1).

(2) Without limiting subrule (1), a case management direction may do one or more of the following —

(a) give directions to assist the convenience of the parties or witnesses;

(b) direct the parties to comply with a timetable for procedural steps that are needed in the case;

(c) dispense with all or any or any further pleadings;

(d) direct specified pleadings to be filed;

(e) dispense with any interlocutory step;

(f) direct that an interlocutory application not be heard;

(g) as to any interlocutory matter —

(i) direct the parties or their legal practitioners to file and exchange memoranda before the hearing of it in order to clarify the matters in issue before the hearing;

(ii) direct that it be dealt with by telephone, video link or other similar means of communication;

(iii) give directions as to the use of audio-visual equipment, computers and other equipment in any hearing of it;

(iv) direct that it be dealt with, and any evidence in relation to it be provided, by email, fax, telegram, telex, courier, post or other similar means;

(v) give directions for the speedier and more effective recording of evidence at any hearing of it;

(h) direct that an application for an adjournment of any proceeding be supported by affidavits of specified people;

(i) limit discovery or direct that discovery be given in stages;

(ia) give directions for the purposes of Order 36A rule 1 as to expert evidence including directions as to any of the following —

(i) the provision to a party or the Court of a copy of a report, or part of a report, of an expert witness, before the trial;

(ii) the disclosure to a party or the Court, in writing, of the substance of all or any part of expert evidence, before the trial;

(iii) the number of expert witnesses who may be called at the trial;

(iv) the provision to the case manager for inspection under subrule (6) of any report or document containing expert evidence or the substance of the expert evidence;

(j) direct any or all of the parties to confer on a "without prejudice" basis for the purpose of identifying, resolving and narrowing the points of difference between them;

(k) direct that experts, whose reports have been provided or whose evidence the substance of which has been disclosed, under a direction under paragraph (ia), confer on a "without prejudice" basis for the purpose of identifying, resolving and narrowing the points of difference between them;

(l) if under paragraph (j) or (k) a conference is directed to be held —

(i) subject to subrule (5) and rule 8, direct that it be conducted by a mediator;

(ii) direct that it be held by telephone, video link or other similar means of communication;

(iii) set the terms or conditions for it and deal with anything in relation to it;

[(m) deleted]

(n) direct a party (***A***) intending to produce a plan, photograph, model or other object (the ***object***) at trial to serve on the other party (***B***), at a time specified, a written notice —

(i) describing the object; and

(ii) stating where and when it may be inspected; and

(iii) requiring B to serve A, within 7 days after the date on which the notice is served, a written notice agreeing or refusing to agree to the admission in evidence of the object without further proof of it;

(o) direct a legal practitioner for a party to give the party a memorandum stating —

(i) the approximate solicitor and client costs and disbursements of the party to the date of the memorandum; and

(ii) the estimated future solicitor and client costs and disbursements of the party to but not including the trial; and

(iii) the estimated length of the trial and the estimated solicitor and client costs and disbursements of the trial; and

(iv) the estimated party and party costs that would be payable by the party if the party were unsuccessful at trial;

(p) set a timetable for the trial of the case including a timetable that includes any limit that could be directed under Order 34 rule 5A(1);

(q) limit the length of written submissions that can be made in the case;

(r) direct the parties to prepare bundles, files or folders of documents for use at the trial of the case, either —

(i) grouped according to topic, class, category, allegation in issue or otherwise; or

(ii) in an order or sequence,

as specified in the direction, and identified or indexed as specified in the direction;

(s) direct a party to serve on the other parties, at times set by the case manager making the direction, a signed

written statement of the proposed evidence in chief of each witness to be called by that party;

(t) direct that a signed written statement referred to in paragraph (s) or any part of it stand as the evidence in chief of the witness;

(u) change the venue of the trial, or adjourn the trial part heard to continue at a different venue;

(v) in exceptional circumstances, direct that an application made by a party under this Order operate as a stay of proceedings;

(w) in exceptional circumstances or if not to do so would frustrate the appeal, direct that an appeal against a decision made under this Order by a registrar operate as a stay of proceedings;

(x) give directions as to the manner in which the parties are to defray the costs of giving effect to any case management direction;

(y) direct that a specified case management direction be complied with by a set date;

(z) direct that a referee give the Court a report on any question or issue of fact.

(3) A case management direction may —

(a) include any ancillary direction that is needed for the purpose of the direction; and

(b) amend or cancel another case management direction.

[(4) deleted]

(5) A case management direction must not, without the consent of the parties, direct that a conference take place where a party would become liable to remunerate a mediator.

(6) For the purpose of deciding whether to make a direction for the purposes of Order 36A rule 1, the case manager may inspect any report or document containing expert evidence or the substance

of the expert evidence, with or without disclosing the contents of that report or document to any other party.

[Rule 2 inserted: Gazette 28 Jul 2010 p. 3441-6; amended: Gazette 13 Nov 2015 p. 4644; 16 Aug 2017 p. 4393-4; SL 2022/74 r. 15.]

3. Term used: enforcement order

An enforcement order is —

(a) an order as to the payment of costs;

(b) an order as to the payment of costs of the parties on an indemnity basis, to be fixed in a manner specified in the order, and payable within 14 days after the date of the order;

(c) a self-executing order for judgment, striking out pleadings or otherwise;

(d) an order under Order 66 rule 5.

[Rule 3 inserted: Gazette 28 Jul 2010 p. 3446.]

4. Inconsistencies with other rules

If a provision in this Order is inconsistent with these rules or the *Supreme Court (Corporations) (WA) Rules 2004*, the provision in this Order prevails.

[Rule 4 inserted: Gazette 28 Jul 2010 p. 3446.]

Division 2 — Provisions applicable to all cases

[Heading inserted: Gazette 28 Jul 2010 p. 3446.]

4A. Case management conferences

An interlocutory application or matter, a review under rule 5 and a request by a party (including a request by a party under rule 5A) must be dealt with by way of a case management conference unless —

(a) the case manager directs otherwise; or

(b) a decision is made in relation to the application, matter, review or request on the basis of documents filed without requiring the parties or their legal practitioners to attend a hearing.

[Rule 4A inserted: Gazette 16 Aug 2017 p. 4394; amended: SL 2022/74 r. 15.]

5. Case manager may review case at any time

(1) The case manager for a case may review the progress of the case —

(a) at any time in the case, on the case manager's own initiative after notifying the parties; or

(b) when hearing a request by a party (including a request by a party under rule 5A); or

(c) when hearing any other application in the case.

(2) On the review, the case manager may do all or any of the following —

(a) make any interlocutory order the case manager considers just;

(b) make any case management direction the case manager considers just;

(c) make any enforcement order the case manager considers just.

(3) For the purposes of subrule (1)(a), the case manager may at any time direct all or any of the parties to a case to attend before the case manager.

(4) If the case manager is a master, subrules (1) and (2) are subject to Order 60 rule 1(3) and (4).

(5) If the case manager is a registrar, subrules (1) and (2) are subject to Order 60A rule 2(2), (3) and (4).

[Rule 5 inserted: Gazette 16 Aug 2017 p. 4394-5.]

5A. Requesting interlocutory orders and case management directions

(1) A party to a case may at any time request the case manager to do any of the following —

(a) make an interlocutory order that the case manager has jurisdiction to make;

(b) make, cancel or amend a case management direction.

(2) The party must make the request by way of a letter to the case manager in accordance with rule 5B(1) and (2) unless —

(a) the request is made orally either during a case management conference or during a hearing; or

(b) a motion or summons is justified by the circumstances of the particular case or the nature of the request, in which case the request may be made by way of motion or summons; or

(c) the *Supreme Court (Corporations) (WA) Rules 2004* apply to the case, in which case the request must be made under those rules; or

(d) a form, prescribed under a written law, is specific to the nature of the request, in which case the request must be made in that form.

(3) The case manager may by notice, direct the parties to attend a case management conference or a hearing to consider the request.

[Rule 5A inserted: Gazette 16 Aug 2017 p. 4395-6.]

5B. Request under r. 5A by letter

(1) A party making a request under rule 5A by way of a letter must —

(a) file the letter and any attachments; and

(b) set out in the letter details of any order or direction sought or file with the letter as an attachment a minute in Form 78 of any order sought; and

(c) file with the letter as an attachment any other relevant document; and

(d) email a copy of the letter and the attachments to the associate to the case manager, or if the case manager is not known, to the associate to the Principal Registrar; and

(e) give a copy of the letter and the attachments to the other parties.

(2) A party must comply with subrule (1) not less than 2 clear days before the case manager is requested to act upon the request.

(3) A party who fails to comply with subrule (1) or (2) in relation to a letter, attachment or other document cannot, without the case manager's leave, refer to or rely on the document —

(a) in any hearing; or

(b) in any other filed document.

(4) If a party is given leave to refer to or rely on a document referred to in subrule (3), the party must file the document as soon as practicable after the leave is given.

(5) Order 67A rule 2(4) and (5) do not apply to a party who fails to comply with subrule (1)(a).

(6) The case manager may direct a party who has made a request by way of a letter to make the request in some other manner.

[Rule 5B inserted: Gazette 16 Aug 2017 p. 4396-7; amended: Gazette 27 Feb 2018 p. 553-4.]

5C. Request under r. 5A at case management conference or hearing

A party who seeks to refer to or rely on a document while making an oral request during a case management conference or a hearing referred to in rule 5A(2)(a) must —

(a) if the document contains a proposed order or a direction, file the document as soon as practicable after the conference or hearing; and

(b) if the document is required to be filed under these rules, comply with Order 67A Division 2 in relation to the document.

[Rule 5C inserted: Gazette 16 Aug 2017 p. 4397; amended: Gazette 27 Feb 2018 p. 554.]

6. Timetables

(1) This rule applies if the case manager for a case directs the parties to the case to comply with a timetable for procedural steps that are needed in the case.

(2) The case manager making the direction must set the timetable.

(3) The case manager may do all or any of the following —

(a) amend the timetable, whether on the case manager's own initiative or on a party's request;

(b) at any time direct the parties to explain in writing why the timetable has not been complied with;

(c) at any time, by notice, direct the parties to attend a hearing and explain why the timetable has not been complied with;

(d) for the purposes of a hearing under paragraph (c), direct the parties to file an affidavit in response to the direction at any time that the case manager considers just;

(e) after a hearing under paragraph (c) —

(i) amend the timetable;

(ii) make any case management direction the case manager considers just;

(iii) make any enforcement order the case manager considers just;

(f) if a party does not comply with the timetable, obey a direction under paragraph (c) or file an affidavit as directed, make any case management direction or enforcement order the case manager considers just.

(4) If the case manager is a master, subrule (3)(e) and (f) are subject to Order 60 rule 1(3) and (4).

(5) If the case manager is a registrar, subrule (3)(e) and (f) are subject to Order 60A rule 2(2), (3) and (4).

(6) If a direction is made under subrule (3)(b), the parties and their legal practitioners must —

(a) give the Court the explanation within the time specified in the direction; and

(b) serve the explanation on each other party.

[Rule 6 inserted: Gazette 16 Aug 2017 p. 4397-9; amended: SL 2022/74 r. 15.]

7. Attendance at proceedings under this Order

(1) A party who is represented by a legal practitioner need not attend a proceeding under this Order unless subpoenaed or directed to do so by the case manager.

(2) Unless the case manager directs otherwise, subrule (1) does not apply to —

(a) a conference conducted by a mediator under rule 8; or

(b) a strategic conference held under rule 14A; or

(c) the first case management conference for the case referred to in rule 18(1).

(3) If there is no legal practitioner on the record for a party that is a body corporate, the case manager presiding at a proceeding under this Order may permit a person who is not a legal practitioner to represent the party.

[Rule 7 inserted: Gazette 16 Aug 2017 p. 4399; amended: SL 2022/74 r. 15.]

8. Conferences of parties with mediator

(1) The case manager for a case may, by notice, direct that a conference conducted by a mediator be held for the case.

(2) The case manager must direct whether the mediator is to be an approved mediator or some other person.

(3) The case manager must not direct that the mediator is to be a person who is not an approved mediator unless the parties consent.

(3A) The following persons must attend the conference unless the mediator or the case manager directs otherwise —

(a) each party to the case;

(b) if a party is represented by a legal practitioner, the legal practitioner;

(c) if a party is not an individual, a representative of the party with authority to conduct settlement negotiations and to settle the case;

(d) if settlement negotiations are to be conducted on behalf of a party by its insurer, a representative of the insurer with authority to conduct settlement negotiations and to settle the case.

(4) In the absence of any other direction made by the case manager —

(a) the conference must take place at the time and place directed; and

(b) if the case manager does not set a date for the conference, each party must, subject to any directions, take the steps necessary to ensure the conference takes place as soon as possible; and

(c) each party's costs of and incidental to the conference shall be the party's costs in the cause, unless the parties agree; but a party may apply for those costs if they have been unnecessarily incurred due to the conduct of the other party; and

(d) the fees and expenses of any mediator who is not a registrar must be paid by the parties in equal shares, unless the parties agree; and

(e) within 2 weeks after the conclusion of the conference, the plaintiff must file a report, signed by or on behalf of each party —

(i) confirming that the conference has taken place as directed; and

(ii) recording the substance of any resolution or narrowing of the points of difference between the parties resulting from the conference.

(5) The mediator —

(a) must not, unless the parties agree, report to the Court on the conference; but

(b) whether or not the parties agree, may report to the Court on any failure by a party to cooperate in the conference.

(6) A report given under subrule (5)(b) must not be disclosed to the trial judge except for the purposes of determining any question as to costs.

[Rule 8 inserted: Gazette 28 Jul 2010 p. 3449-50; amended: Gazette 16 Aug 2017 p. 4399-400; SL 2022/74 r. 15.]

9. Referees

(1) This rule applies if the case manager for a case directs that a referee give the Court a report on any question or issue of fact.

(2) The case manager may do any or all of the following —

(a) appoint the referee;

(b) give the referee instructions about the question or issue of fact referred and the report required;

(c) give directions with respect to the conduct of proceedings before the referee;

(d) give directions for the provision —

(i) of services of officers of the Court;

(ii) of courtrooms and other facilities,

for the purpose of the referee;

(e) vary or cancel a direction given under this subrule.

(3) The case manager may —

(a) determine the amount of the fees to be paid to the referee; and

(b) direct how, when and by whom the whole or any part of the fees referred to in paragraph (a) are to be paid.

(4) Evidence before the referee —

(a) may be given orally or in writing; and

(b) must, if the referee so requires, be given on oath or affirmation.

(5) Evidence additional to the evidence taken before the referee cannot be adduced before the Court except with the leave of the Court.

[Rule 9 inserted: Gazette 28 Jul 2010 p. 3450-1; amended: Gazette 16 Aug 2017 p. 4400-1.]

Division 3 — Cases on the CMC List

[Heading inserted: Gazette 28 Jul 2010 p. 3451.]

10. Application of this Division

This Division applies to every CMC List case unless and to the extent it is directed otherwise by a CMC List case manager.

[Rule 10 inserted: Gazette 28 Jul 2010 p. 3451; amended: Gazette 16 Aug 2017 p. 4401.]

11. Cases on CMC List

These cases are on the CMC List —

(a) any case in which defamation is alleged;

(ba) any case in which there is an application for —

(i) judicial review to which Order 56 applies; or

(ii) a review order under the *Magistrates Court Act 2004* section 36; or

(iii) a writ of habeas corpus or an information of *quo warranto*;

(b) any case that is directed to be on the list under rule 13;

(ca) any case involving proceedings to which the *Supreme Court (Arbitration) Rules 2016* apply;

(c) any case on the CMC List, as established administratively by the Court, immediately before the *Supreme Court Amendment Rules 2010* rule 5 comes into operation.

[Rule 11 inserted: Gazette 28 Jul 2010 p. 3451-2; amended: Gazette 15 Mar 2013 p. 1206; 23 Apr 2013 p. 1591 (disallowed: Gazette 1 Nov 2013 p. 4910); 17 Dec 2013 p. 6231; 16 Aug 2017 p. 4401.]

12. Headings to documents

The heading of every document filed or issued in a CMC List case must include "Commercial and Managed Cases List" under "In the Supreme Court of Western Australia".

[Rule 12 inserted: Gazette 28 Jul 2010 p. 3452.]

13. CMC List case manager may direct case to be on or taken off CMC List

(1) Only a CMC List case manager can direct that a case be admitted to or taken off the CMC List.

(2) A CMC List case manager, on the case manager's own initiative or on a request made under rule 14, may direct a case to be admitted to the CMC List.

(3) A CMC List case manager, on the case manager's own initiative or on a request by a party, may direct a CMC List case to be taken off the CMC List.

[Rule 13 inserted: Gazette 16 Aug 2017 p. 4401-2.]

14. Requesting case be put on CMC List

(1) A party to a case may request a direction that the case be admitted to the CMC List.

(2) The request must not be made until after the first of the following events occurs —

(a) an appearance has been entered by each party who is required to do so;

(b) the time limited for appearing expires.

(3) The request is a request under rule 5A and must —

(a) be made by letter in accordance with rule 5B(1) and (2); and

(b) contain the email address (if any) —

(i) of each party to the case, other than a party who is required to enter an appearance and has not; and

(ii) that was provided by a party in accordance with Order 71A rule 3.

(4) A request made under this rule must be decided by a CMC List case manager.

(5) At the hearing of the request, the CMC List case manager, if satisfied the case should be subject to this Division, may direct the case be admitted to the CMC List unless a party shows cause why it should not be admitted.

[Rule 14 inserted: Gazette 16 Aug 2017 p. 4402.]

14A. Strategic conferences

(1) In this rule —

strategic conference means a conference at which it is to be demonstrated how a party to a case proposes to attain the objects referred to in Order 1 rule 4B(1).

(2) The CMC List case manager may, by notice, direct that a strategic conference be held for the case.

(3) The following persons must attend the conference unless the case manager directs otherwise —

(a) each party to the case;

(b) if a party is represented by a legal practitioner, the legal practitioner.

[Rule 14A inserted: Gazette 16 Aug 2017 p. 4403; amended: SL 2022/74 r. 15.]

15. Interlocutory hearings

(1) The CMC List case manager may hear any interlocutory matter relating to the case, or may refer the matter to a judge or master for hearing who has and may exercise all powers of the case manager.

(2) If the CMC List case manager is a master, subrule (1) is subject to Order 60 rule 1(3) and (4).

[Rule 15 inserted: Gazette 28 Jul 2010 p. 3453; amended: Gazette 13 Nov 2015 p. 4645; 16 Aug 2017 p. 4403.]

Division 4 — Cases not on the CMC List

[Heading inserted: Gazette 28 Jul 2010 p. 3453.]

16. Application of this Division

This Division applies to every case that is not on the CMC List unless and to the extent it is ordered otherwise by a judge or master.

[Rule 16 inserted: Gazette 28 Jul 2010 p. 3453.]

*[**17.** Deleted: Gazette 16 Aug 2017 p. 4404.]*

18. Case management conferences for cases not on CMC List

(1) The case manager for a case may, by notice, direct that the first case management conference be held for the case.

(2) The following persons must attend the first case management conference for a case unless the case manager directs otherwise —

(a) each party to the case;

(b) if a party is represented by a legal practitioner, the legal practitioner.

(3) At any case management conference the case manager may inquire into the following —

(a) whether pleadings or any specified pleadings are necessary;

(b) the state of the pleadings and whether the times prescribed by these rules for pleadings are being complied with and if not, the reasons for the non-compliance;

(c) whether any party intends to commence third party or similar proceedings under Order 19;

(d) whether any party intends to require discovery and inspection under Order 26;

(e) whether any party intends to interrogate under Order 27;

(f) whether any party intends to adduce expert evidence at the trial;

(g) whether a conference of the parties with a mediator is needed and if so, when;

(h) the likely length of the trial;

(i) any other matter relevant to ensuring the case is managed in accordance with Order 1 rule 4B.

(4) A case is not to be entered for trial unless the case manager has conducted a full case evaluation at one or more case management conferences for the case.

(5) The case manager may, at the request of a party, or on the case manager's own initiative, make a direction that subrule (4) does not apply to the case.

(6) The case manager may conduct a full case evaluation referred to in subrule (4) by inquiring into the following —

(a) the state of the pleadings and if they are not closed, the reasons for that;

(b) whether a conference of the parties with a mediator is needed and if so, when;

(c) the content of any report or document containing expert evidence or the substance of expert evidence and whether a conference between experts is needed;

(d) whether the case, at the time of the listing conference, will be ready for trial and if not, the reasons for not being ready;

(e) whether the estimated length of the trial is still accurate;

(f) the number of witnesses to be called at the trial, whether there are any known difficulties as to the availability of any witness and the estimated time it will take for each witness to give evidence;

(g) the administrative resources likely to be needed for the trial.

(7) The first and any other case management conference may be held even if, at the time of the case management conference, not all parties to the case have been served with the originating process or have entered appearances.

[Rule 18 inserted: Gazette 16 Aug 2017 p. 4404-6; amended: SL 2022/74 r. 15.]

19. Powers of case manager at case management conferences for cases not on CMC List

(1) At any case management conference the case manager may at the request of a party or on the case manager's own initiative do one or more of the following —

(a) make any interlocutory order the case manager considers just;

(b) make any case management direction the case manager considers just;

(c) make any enforcement order the case manager considers just.

(2) If the case manager is a master, subrule (1) is subject to Order 60 rule 1(3) and (4).

(3) If the case manager is a registrar, subrule (1) is subject to Order 60A rule 2(2), (3) and (4).

(4) The case manager may at the request of a party or on the case manager's own initiative, arrange for one or more further case management conferences to be held but any further case management conference must not be held on or after the date of the listing conference.

(5) The case manager may at the request of a party or on the case manager's own initiative, adjourn any case management conference from time to time but not to a date on or after the date of the listing conference.

[Rule 19 inserted: Gazette 16 Aug 2017 p. 4406-7.]

20. Listing conference

(1) A listing conference shall be held before a judge in chambers.

(2) The listing conference shall be held as soon as practicable after the case is entered for trial or, in the case of an originating summons, after an application is made for an appointment for the attendance of the parties for the hearing of the summons.

(3) At the listing conference the judge may review the documents on the Court file and inquire into these matters —

(a) whether the case can be settled;

(b) which documents will be admitted at trial by consent;

(c) the number of witnesses to be called at the trial, whether there are any known difficulties as to the availability of any witness, and the estimated time it will take for them to give their evidence in chief;

(d) whether the case in all respects is ready to go to trial.

(4) At the listing conference the judge may do any or all of the following —

(a) make any case management direction the judge considers just;

(b) amend or cancel any case management direction made previously;

(c) if the judge considers it is convenient to do so to facilitate the preparation for, or the conduct of, the trial, or is otherwise desirable —

(i) after giving notice to the parties, determine any question of law; or

(ii) determine any question of procedure.

(5) The judge may adjourn the listing conference from time to time.

(6) At the listing conference the judge may fix the date of the trial of the case and the length of the trial.

[Rule 20 inserted: Gazette 28 Jul 2010 p. 3458-9.]

Division 5 — Inactive Cases List

[Heading inserted: Gazette 28 Jul 2010 p. 3459.]

21. Term used: Inactive Cases List

In this Division —

Inactive Cases List means a list of inactive cases kept by the Principal Registrar for the purposes of this Division.

[Rule 21 inserted: Gazette 28 Jul 2010 p. 3459; amended: Gazette 16 Aug 2017 p. 4407.]

22. Case manager may direct party to show cause

(1) The case manager for a case may at any time, by notice, direct the parties to attend a hearing before a case manager to show cause why the case should not be put on the Inactive Cases List.

(2) The date of the hearing must be at least 7 days after the date on which the direction is made.

(3) The direction does not prevent any party to the case from taking any procedural step in the case.

(4) At the hearing the case manager may order that the case be put on the Inactive Cases List if not satisfied that the case is being conducted in a timely way, having regard to the requirements of these rules and the circumstances of the case.

(5) An order may be made under subrule (4) in the absence of any party.

[Rule 22 inserted: Gazette 16 Aug 2017 p. 4407.]

23. Springing order that case be put on Inactive Cases List

(1) A judge, master or registrar making an interlocutory order or case management direction in a case may include an order that unless the interlocutory order or direction is complied with by a date stated in the order, the case is to be put on the Inactive Cases List.

(2) Unless countermanded by a judge, master or registrar, before it has effect, the order has effect according to its terms.

[Rule 23 inserted: Gazette 28 Jul 2010 p. 3460.]

24. Cases inactive for 12 months deemed inactive

If no procedural step is taken in a case for 12 months by any party to the case, the case is taken to be inactive unless the case manager for the case orders otherwise.

[Rule 24 inserted: Gazette 28 Jul 2010 p. 3460.]

25. Parties to be notified of case being on Inactive Cases List

(1) When an order is made under rule 22(4), or an order made under rule 23(1) takes effect, or a case is taken to be inactive under rule 24, the Principal Registrar must —

(a) put the case on the Inactive Cases List; and

(b) give all parties to the case written notice of —

(i) the fact that the case is on the Inactive Cases List and why; and

(ii) the effect of rule 28.

(2) If under subrule (1)(b) written notice is given to a party to the case by giving the notice to a legal practitioner for the party, the legal practitioner must, as soon as practicable after receiving the notice, notify the party of —

(a) the fact that the case is on the Inactive Cases List and why; and

(b) the effect of rule 28.

[Rule 25 inserted: Gazette 16 Aug 2017 p. 4408; SL 2022/74 r. 15.]

26. Consequences of case being on Inactive Cases List

(1) If a case is on the Inactive Cases List, only these documents may be filed in the Court in relation to the case —

(a) a request for an order under rule 27(1);

(b) a notice of discontinuance by the plaintiff under Order 23 rule 2;

(c) a request made by the plaintiff or the defendant for leave under Order 23 rule 2;

(d) a written consent under Order 43 rule 16 to the making of an order that would finally dispose of the case.

(2) If the plaintiff or defendant in a case on the Inactive Cases List files a request for leave under Order 23 rule 2, the Court may grant leave under that rule even though the case has not been removed from that list.

(3) If a written consent is filed under Order 43 rule 16 to the making of an order in a case on the Inactive Cases List that would finally dispose of the case, the Court may make the order even though the case has not been removed from that list.

[Rule 26 inserted: Gazette 12 Jun 2012 p. 2445-6; amended: Gazette 16 Aug 2017 p. 4408-9.]

27. Removing cases from Inactive Cases List

(1) Any party to a case on the Inactive Cases List may make a request to the Court for an order that the case be taken off the Inactive Cases List.

(2) The Court may order a case be taken off the Inactive Cases List if satisfied the case will be conducted in a timely way or for any other good reason.

(3) An order that a case be taken off the Inactive Cases List may include any conditions necessary to ensure the case is conducted in a timely way.

[Rule 27 inserted: Gazette 28 Jul 2010 p. 3461; amended: Gazette 16 Aug 2017 p. 4409.]

28. Certain cases taken to have been dismissed

(1) If a case is on the Inactive Cases List for 6 continuous months after the date on which notice is given under rule 25(1)(b) to the parties to the case, the case is taken to have been dismissed for want of prosecution.

(1A) If notice is given under rule 25(1)(b) to different parties to the case on different dates, then, for the purposes of subrule (1), notice is taken to have been given on the last of those dates.

(2) If no procedural step (except an application to dismiss the case for want of prosecution) is taken in the 6 months after the date on which a case is ordered to be taken off the Inactive Cases List, the case is taken to have been dismissed for want of prosecution.

(3) If under subrule (1) or (2) a case is dismissed, the Principal Registrar must give all parties to the case written notice of the fact.

(4) Notwithstanding a case is dismissed under subrule (1) or (2) —

(a) any party to the case may apply for an order for costs; and

(b) the Court may make an order as to costs.

[Rule 28 inserted: Gazette 28 Jul 2010 p. 3461; amended: Gazette 12 Jun 2012 p. 2446; 16 Aug 2017 p. 4409.]

Order 4 — Mode of commencing proceedings: applications in pending proceedings

1. Commencing civil proceedings

Subject to the provisions of any Act and of these rules —

(a) every action in the Court must be commenced by writ;

(b) civil proceedings between parties to be heard in chambers must be commenced by originating summons;

(c) all other civil proceedings must be commenced by originating motion.

2. Applications in pending proceedings

Applications in pending proceedings must be made —

(a) if in court, by motion;

(b) if in chambers, in accordance with Order 59.

[Rule 2 amended: Gazette 28 Oct 1996 p. 5674.]

3. Individual may act in person or by solicitor; body corporate must act by solicitor

(1) Subject to subrule (2) and to Order 18 rule 12, Order 18A rule 2 and Order 70 rule 2, any person (whether or not the person sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the Supreme Court by a solicitor or in person.

(2) Except as expressly provided by or under any Act a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.

[Rule 3 amended: Gazette 28 Jun 2011 p. 2552; SL 2023/16 r. 4.]

Order 4AA — Mortgage actions

[Heading inserted: Gazette 16 Nov 2016 p. 5186.]

1. Terms used

(1) In this Order —

mortgage includes a legal and an equitable mortgage and a legal and an equitable charge, whether or not the mortgage or charge is registered under the *Transfer of Land Act 1893*;

mortgage action means proceedings to which this Order applies.

(2) In this Order, ***mortgagee*** and ***mortgagor*** have meanings that correspond to the meaning of ***mortgage***.

[Rule 1 inserted: Gazette 16 Nov 2016 p. 5186.]

2. Application

(1) This Order applies to any proceedings by a mortgagee or mortgagor, or by any person who has the right to foreclose or redeem any mortgage, if in the proceedings there is a claim for relief of any of the following kinds —

(a) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by —

(i) the mortgagor; or

(ii) any other person who is, or is alleged to be, in possession of the property;

(b) foreclosure;

(c) sale of the mortgaged property;

(d) redemption;

(e) reconveyance of the property or its release from the security;

(f) delivery of possession by the mortgagee.

(2) Nothing in this Order extends or affects the powers of sale or foreclosure conferred by the *Transfer of Land Act 1893* Part IV Division 3.

[Rule 2 inserted: Gazette 16 Nov 2016 p. 5186-7.]

3. Commencing mortgage actions

(1) A mortgage action must be begun by writ unless the mortgage action is a defendant's application for an order for delivery of possession referred to in subrule (3).

(2) If the writ is indorsed with a claim for relief of a kind referred to in rule 2(1)(a), (b) or (c), a notice in Form 4 must be attached to the front of the writ when the writ is served.

(3) A defendant in a mortgage action for redemption may apply by motion or summons for an order for delivery to the defendant of possession of the mortgaged property if —

(a) the plaintiff has failed to redeem; and

(b) foreclosure has taken place.

(4) On an application made under subrule (3) the Court may make whatever order it thinks fit.

[Rule 3 inserted: Gazette 16 Nov 2016 p. 5187.]

4. Transitional provision for former Order 62A

(1) In this rule —

commencement day means the day on which the *Supreme Court Amendment Rules 2016* rule 13 comes into operation;

former Order 62A means Order 62A as in effect immediately before it was deleted by the *Supreme Court Amendment Rules 2016* rule 13;

transitional proceedings means proceedings to which former Order 62A applied immediately before commencement day.

(2) Former Order 62A applies to and in relation to the following as if former Order 62A had not been deleted —

(a) transitional proceedings begun by originating summons before commencement day;

(b) transitional proceedings begun by writ if the writ was served before commencement day.

[Rule 4 inserted: Gazette 16 Nov 2016 p. 5187-8.]

Order 5 — Writs of summons

1. Form of writ

The writ for the commencement of an action, shall, except in the cases in which any different form is provided in these rules, be in Form No. 1 or 2, whichever is appropriate.

2. Writ for service outside WA, form of

A writ to be served outside the State shall be in the form of Form 3.

[Rule 2 inserted: Gazette 12 Jun 2012 p. 2446.]

3. Place of trial to be shown

In all cases in which it is proposed that the trial shall be elsewhere than in Perth, the writ must show the proposed place of trial.

4. Place of issue

Every writ shall be issued out of the Central Office.

5. Preparation of writ

Writs shall be prepared by the plaintiff or his solicitor.

6. Sealing of writ

Issue of a writ takes place upon its being sealed by the proper officer.

7. Copy to be left with officer

(1) The plaintiff or his solicitor shall, on presenting a writ for sealing, leave with the officer a copy of the writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

(2) Subrule (1) does not apply if the writ is filed electronically.

[Rule 7 amended: Gazette 27 Feb 2018 p. 554.]

8. Writ to be recorded when issued

The proper officer must record, in the manner directed by the Chief Justice from time to time, a writ when it is issued.

[Rule 8 inserted: Gazette 27 Feb 2018 p. 554.]

9. Writ for service outside Australia, leave to issue needed

A writ for service outside Australia shall not be issued without the leave of the Court.

[Rule 9 inserted: Gazette 12 Jun 2012 p. 2446.]

10. All writs to be in name of Chief Justice or Senior Puisne Judge

Every writ of summons and also (unless by an Act or by these rules it is otherwise provided) every other writ shall bear date on the day on which it is issued and shall be tested in the name of the Chief Justice, whether he is within or outside the State, or if there is no Chief Justice, in the name of the Senior Puisne Judge.

11. Time for appearance to be stated in writ

(1) The time to be stated in a writ for the appearance of any defendant shall be not less than the time next hereinafter specified according to the place of service, that is to say —

Where the place for service is	Time
(1) In the State of Western Australia —	
Less than 300 km from Perth	10 days.
300 km but less than 600 km from Perth	16 days.
600 km and above 600 km	21 days.

	Where the place for service is	Time
(2)	Outside the State but within Australia	See subrule (2).
(3)	Outside Australia	See subrule (3).

(2) In respect of a writ to be served outside the State but within Australia, the time must accord with the *Service and Execution of Process Act 1992* (Commonwealth).

(3) In respect of a writ to be served outside Australia, the time ~~must be fixed by~~is 42 days from the date of service unless the Court ~~in accordance with~~otherwise orders under Order ~~5~~ 10 rule ~~5~~ 9.

(4) In the computation of the times prescribed by this rule, the day of service shall be excluded.

[Rule 11 amended: Gazette 7 Dec 1973 p. 4488; 14 Dec 1979 p. 3869; 3 Jul 2009 p. 2683; 12 Jun 2012 p. 2453; SL 2024/38 r. 5.]

Order 6 — Indorsement of claim: other indorsements

1. Nature of claim etc. to be indorsed on writ

(1) Before a writ is issued it must be indorsed with a concise statement of the nature of the claim made, and of the relief or remedy required in the action.

(2) In case of non-compliance with subrule (1) the defendant may apply before appearance to set aside or amend the writ or for particulars.

[Rule 1 amended: Gazette 28 Jun 2011 p. 2552.]

2. Action for defamation by publication

In actions for defamation by publication the indorsement must state sufficient particulars to enable the publications in respect of which the action is brought to be identified.

[Rule 2 amended: Gazette 16 Aug 2017 p. 4409.]

3. Statement of claim may be indorsed on writ in some actions

In any action other than an action which includes —

(a) a claim by the plaintiff based on an allegation of fraud; or

(b) a claim by the plaintiff in respect of defamation, malicious prosecution, false imprisonment, seduction or breach of promise of marriage,

a statement of claim may, at the option of the plaintiff, be indorsed on the writ.

[Rule 3 amended: Gazette 16 Aug 2017 p. 4410.]

4. Claim for liquidated demand, indorsements required for, costs etc.

Where the plaintiff's claim is for a debt or liquidated demand only, the writ before it is issued must be indorsed with a

statement of the amount claimed in respect of the debt or demand, and for costs up to and including service, respectively, and such indorsement shall further state that upon payment thereof within the time allowed for appearance, further proceedings will be stayed. The defendant may notwithstanding such payment have the costs taxed and if more than one-sixth is disallowed, the plaintiff's solicitor shall pay the costs of taxation, unless otherwise ordered by the taxing officer.

5. Representative character

If the plaintiff sues, or the defendant, or any of the defendants, is sued in a representative capacity, the indorsements shall show, in accordance with such of the indorsements in Form No. 5 as is applicable to the case or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

6. Claim for account

In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ shall be indorsed with a claim that such account be taken.

7. Writ etc. to state contact details

A writ or other document commencing proceedings must, in accordance with Order 71A, state —

(a) the geographical address; and

(b) the service details,

of each person commencing the proceedings.

[Rule 7 inserted: Gazette 21 Feb 2007 p. 534.]

*[**8-11.** Deleted: Gazette 21 Feb 2007 p. 534.]*

Order 7 — Duration and renewal of writ: concurrent writs

1. Duration and renewal of writ

(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

2. Proof of extension of validity of writ

The production of a writ purporting to be marked with the official stamp showing the period for which the validity of the writ has been extended shall be sufficient evidence of the validity of the writ having been so extended, and of the commencement of the action as of the date of the original writ, for all purposes.

3. Concurrent writs

(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

(2) Each concurrent writ shall bear *teste* of the same day as the original writ, and shall be sealed by the proper officer with a seal bearing the word "Concurrent" and the date of issue of the concurrent writ.

(3) Without affecting the generality of subrule (1) —

(a) a writ to be served within the jurisdiction may be issued as a concurrent writ with one to be served out of the jurisdiction; and

(b) a writ to be served out of the jurisdiction may be issued as a concurrent writ with one to be served within the jurisdiction.

(4) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

(5) Subrule (6) applies if —

(a) an original writ is sealed and issued to the plaintiff by means of the ECMS; or

(b) the plaintiff has lawful access to an original writ in the ECMS.

(6) If this subrule applies —

(a) the plaintiff may print from the ECMS 1 or more copies of the original writ; and

(b) a printed copy may be treated as a concurrent writ despite subrule (2) not having been complied with.

[Rule 3 amended: Gazette 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2447; 27 Feb 2018 p. 555; 31 Dec 2019 p 4677.]

4. Unserved writs may be struck out

(1) If at any time after 6 months after a writ is issued it appears to the Court that —

(a) no affidavit of service of the writ has been filed by the plaintiff; and

(b) no appearance has been entered to the writ,

the Court may, by notice, direct that a hearing be held, at least 7 days after the direction is made, where the plaintiff must show cause why the writ should not be struck out.

(2) If at the hearing the Court is not satisfied that the writ has not been served for good reason the Court may —

(a) strike out the writ; or

(b) make directions as to the service of or the time for serving the writ.

(3) On being struck out, a writ and any writ that is concurrent with it cease to be valid.

[Rule 4 inserted: Gazette 28 Oct 1996 p. 5674-5; amended: Gazette 16 Aug 2017 p. 4410.]

Order 8 — Disclosure by solicitors: change of solicitors

1. Solicitor to declare, if required to, whether writ issued by him

(1) Every solicitor whose name is indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority.

(2) If the solicitor answers in the affirmative, then he shall also, in case the Court so orders and directs, declare in writing within a time allowed by the Court, the profession, occupation, or quality, and place of abode of the plaintiff, on pain of being guilty of a contempt of court.

(3) If the solicitor declares that the writ was not issued by him or with his authority, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereon without leave of the Court.

2. Change of solicitor

(1) A party suing or defending by a solicitor may change his solicitor without an order for that purpose, upon notice of such change being filed, but until such notice is filed and a copy thereof served in accordance with this rule, the former solicitor shall subject to the provisions of this Order, be considered the solicitor of the party until the final conclusion of the cause or matter including any appeal therein.

(2) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

[Rule 2 amended: Gazette 27 Feb 2018 p. 555.]

*[**3.** Deleted: Gazette 27 Feb 2018 p. 555.]*

4. Appointment of solicitor by self-represented person

Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose, by filing a notice of appointment of a solicitor and rule 2(2) shall with the necessary modifications, apply in relation to a notice of appointment of a solicitor as it applies in relation to a notice of change of solicitor.

[Rule 4 amended: Gazette 27 Feb 2018 p. 555.]

5. Intention to act in person, notice of

Where a party, after having sued or defended by a solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 2 shall with the necessary modifications apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of solicitor.

[Rule 5 amended: Gazette 21 Feb 2007 p. 534.]

5A. Form and content of notices

A notice filed under rule 2, 3, 4 or 5 —

(a) must be in Form 5AA; and

(b) must state, in accordance with Order 71A —

(i) the party's geographical address; and

(ii) the party's service details.

[Rule 5A inserted: Gazette 13 Nov 2015 p. 4645.]

6. Removal of solicitor from record

(1) Where a solicitor who has acted for a party in a cause or matter has died or become bankrupt, or cannot be found or has ceased to have the right of practising in the Court, or for any other

reason has ceased to practise, and the party has not given notice of change of solicitor or notice of intention to act in person, any other party to the cause or matter may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, and the Court may make an order accordingly.

(2) An application for an order under this rule must be made by summons which, unless the Court otherwise directs, must be served on the party to whose solicitor the application relates, and must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this rule the party on whose application it was made must —

(a) forthwith serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order; and

(b) file a certificate signed by him or his solicitor that the order has been duly served as aforesaid.

[Rule 6 amended: Gazette 27 Feb 2018 p. 555.]

7. Withdrawal of solicitor who has ceased to act for party

(1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with the provisions of this Order, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter and the Court may make an order accordingly; but unless and until the solicitor —

(a) serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, and

(b) files a certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to rules 1 to 6, be considered the solicitor of the party until the final conclusion of the cause or matter including any appeal therein.

(2) An application for an order under this rule must be made by summons, which unless the Court otherwise directs, must be served on the party for whom the solicitor acted, and must be supported by an affidavit stating the grounds of the application.

(3) The Court may dispense with the necessity of serving a party to a cause or matter with an order of the kind mentioned in subrule (1).

[Rule 7 amended: Gazette 15 Jun 1973 p. 2247; 23 May 1975 p. 1404; 28 Jun 2011 p. 2552 and 2553; 27 Feb 2018 p. 555.]

8. Effect of order made under this Order

Any order made under this Order shall not affect the rights of the solicitor and the party as between themselves.

9. Service details of party whose solicitor is removed

If —

(a) an order is made under rule 6 in respect of the solicitor of a party; or

(b) an order is made under rule 7 in respect of the solicitor of a party, and the solicitor has complied with rule 7(1),

the party's service details are to be taken to be the party's geographical address stated on the most recently filed document until —

(c) a notice is filed under rule 4 or 5; or

(d) the Court orders otherwise on an *ex parte* application by the party,

in which case the party's service details are those stated in the notice or ordered by the Court.

[Rule 9 inserted: Gazette 21 Feb 2007 p. 534-5.]

*[**10.** Deleted: Gazette 21 Feb 2007 p. 534.]*

11. Solicitor not to act for adverse parties

No solicitor shall act in any cause or matter for plaintiff and defendant, or for any 2 or more defendants having adverse interests in a cause or matter.

12. Legal practitioner or clerk not to be security

No legal practitioner or articled or other clerk to a legal practitioner shall be security for any party in any court without the leave of a judge.

[Rule 12 amended: SL 2022/74 r. 15.]

Order 9A — Interested non-parties

[Heading inserted: Gazette 12 Jun 2012 p. 2447.]

1. Terms used

In this Order —

case has the meaning given in Order 4A rule 1;

interested non-party, in relation to a party to a case, means a person, other than a legal practitioner for the party, who —

(a) provides funding or other financial assistance to the party for the purposes of conducting the case; and

(b) exercises direct or indirect control or influence over the way in which the party conducts the case.

[Rule 1 inserted: Gazette 12 Jun 2012 p. 2447; amended: SL 2022/74 r. 15; SL 2023/16 r. 5.]

2. Parties to advise identity of interested non-parties

(1) A party to a case must notify the Principal Registrar and each other party to the case of the identity of any person who is an interested non-party in relation to the party to the case.

(2) The notice is to be given in writing as soon as is reasonably practicable after the person becomes an interested non-party in relation to the party to the case.

[Rule 2 inserted: Gazette 12 Jun 2012 p. 2447.]

3. Duties of interested non-party

The duties to the Court of an interested non-party in relation to a party to a case are the following —

(a) not to engage in conduct which is misleading or deceptive, or to aid, abet or induce such conduct, in connection with the conduct of the case;

(b) to cooperate with the parties and the Court in connection with the conduct of the case;

(c) to use reasonable endeavours to ensure that the goal in Order 1 rule 4A and the objects in Order 1 rule 4B are attained.

[Rule 3 inserted: Gazette 12 Jun 2012 p. 2447-8.]

4. Disclosure of agreements relating to litigation funding

(1) This rule applies if a party to a case represents 1 or more persons who are not parties to the case, or the interests of those persons, in the case.

(2) The case manager for the case may, at any time, order the party to give the case manager a copy of any agreement relating to funding or other financial assistance an interested non-party provides to the party for the purposes of conducting the case.

[Rule 4 inserted: SL 2023/16 r. 6.]

Order 9 — Service of originating process: general provisions

1. Service of writ~~,~~: general provisions

(1) Subject to the provisions of any Act and these rules, a writ must be served personally on each defendant by the plaintiff or his agent.

(2) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.

(3) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ shall be deemed to be duly served on him and to have been so served on the date on which he entered the appearance.

(4) Where a writ is served on a defendant otherwise than by virtue of subrule (2) or (3~~), then subject to~~) or Order 10 ~~rule 9(9),~~Division 4, the plaintiff in the action begun by the writ is not entitled to enter judgment against the defendant in default of appearance or in default of defence unless, within 3 days after service, the person serving it indorses on the sealed copy of the writ the following particulars —

(a) the day of the week and date on which it was served;

(b) where it was served;

(c) the person on whom it was served;

(d) if the person on whom it was served is not the defendant — the capacity in which the person was served;

(e) if under Order 4AA rule 3(2) a Form 4 must be attached to the writ when it is served — a statement that the

Form 4 was attached to the front of the writ when it was served.

[Rule 1 amended: Gazette 28 Jun 2011 p. 2552; 16 Nov 2016 p. 5188-9; SL 2024/38 r. 6.]

2. Service of writ as to contract on agent of principal who is outside WA

(1) Where the Court is satisfied on an *ex parte* application that —

(a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction; and

(b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate; and

(c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

the Court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must enter an appearance.

(3) Where an order is made under this rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction, if such address is known to the plaintiff.

3. ~~Serving~~Effect of serving writ in accordance with contract~~, effect of~~

(1) Where —

(a) a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Supreme Court has jurisdiction to hear and determine any such action; and

(b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner or at such place (whether within or out of the jurisdiction), as may be so specified,

then if an action in respect of the contract is begun in the Supreme Court and the writ by which it is begun is served in accordance with the contract the writ shall, subject to subrule (2), be deemed to have been duly served on the defendant.

~~(2) A writ served outside Australia in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of subrule (1) unless leave to serve the writ outside Australia has been granted under Order 10 rule 1 or 2.~~

[(2) deleted]

[Rule 3 amended: Gazette 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2448; SL 2024/38 r. 7.]

4. Writ for possession of land where no person in possession, service of

In an action claiming possession of land, the Court may —

(a) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service

cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to the door of the dwelling house or to some conspicuous part of the land;

(b) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to the door of the dwelling house or to some conspicuous part of the land shall be treated as good service on that defendant.

5. Service of other originating process

Rules 1 to 4 except rule 1(4) shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ, and rule 1(1) and (2) shall, with any necessary modifications, apply in relation to an originating summons to which no appearance need be entered, a notice of an originating motion and a petition as they apply in relation to a writ.

[Rule 5 amended: Gazette 28 Jun 2011 p. 2553.]

Order 10 — Service ~~out of the~~outside jurisdiction

~~**1A. When leave to serve is required; application of r. 9 to 11**~~

~~*(1) A writ*~~ *[Heading inserted: SL 2024/38 r. 8]*

Division 1 — Preliminary

[Heading inserted: SL 2024/38 r. 8.]

1. Term used: originating process

In this Order —

originating process means a document by which a proceeding is commenced or a counterclaim or third party claim is made.

[Rule 1 inserted: SL 2024/38 r. 8.]

2. Application of this Order

This Order applies to service —

(a) outside the State but in Australia; or

(b) outside Australia, including in Convention countries.

Note for this rule:

See also Order 11A in relation to service in a Convention country and Order 11A rule 2 in relation to the interaction between this Order and that Order.

[Rule 2 inserted: SL 2024/38 r. 8.]

Division 2 — Service outside jurisdiction but in Australia

[Heading inserted: SL 2024/38 r. 8.]

3. Service outside State but in Australia

An originating process served on a person outside the State but in Australia ~~has no effect unless the person was~~ must be served ~~under~~in accordance with the *Service and Execution of Process Act 1992* (Commonwealth).

~~*(2) A writ served on a person*~~*[Rule 3 inserted: SL 2024/38 r. 8.]*

Division 3 — Service outside Australia~~, except a writ~~

[Heading inserted: SL 2024/38 r. 8.]

4. Service in New Zealand of documents in relation to Trans-Tasman proceedings

(1) An originating process or other document that may be served on a person in New Zealand under the *Trans-Tasman Proceedings Act 2010* (Commonwealth~~), has no effect unless~~) Part 2 Division 2 must be served in accordance with that Act.

~~(a) the Court, under~~Note for this subsection:

See Order~~, granted leave to serve the person; and~~

~~(b) the person was served~~

~~(i) under~~ 39A for rules ~~9~~ in relation to ~~11; or~~

~~(ii) under Order 11A~~proceedings and ~~the convention referred~~NZ judgments to ~~in that Order.~~

~~(3A) A writ served on a person in New Zealand has no effect unless it is served under~~which the *Trans-Tasman Proceedings Act 2010* (Commonwealth~~).~~) applies.

(~~3~~2) Rules ~~9~~ 5 to ~~11 do not apply to or in relation to the~~ 12 (which contain rules on service ~~of a writ on a person~~ outside Australia ~~under the convention referred to in Order 11A.~~

~~*[Rule 1A inserted: Gazette 3 Jul 2009 p. 2683-4; amended: Gazette 12 Jun 2012 p. 2448 and 2453; 3 Aug 2012 p. 3749.]*~~

~~1. When~~) do not apply to service ~~out~~ in New Zealand of an originating process for, or of ~~jurisdiction is permissible~~

~~(1) The Court~~any other document to be served in or for, a proceeding an originating process for which may ~~grant~~be served in New Zealand under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) Part 2 Division 2.

[Rule 4 inserted: SL 2024/38 r. 8.]

5. When allowed without leave ~~to serve a person~~under Division

An originating process may be served outside Australia ~~with a writ, or notice~~without leave in the following cases —

(a) when the claim is founded on a tortious act or omission —

(i) which was done or which occurred wholly or partly in Australia; or

(ii) in respect of which the damage was sustained wholly or partly in Australia;

(b) when the claim is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in respect of a breach of, a ~~writ,~~contract which —

(i) was made or entered into in Australia; or

(ii) was made by or through an agent trading or residing in Australia; or

(iii) was to be wholly or in part performed in Australia; or

(iv) was by its terms or by implication to be governed by Australian law or to be enforceable or cognisable in an Australian court;

(c) when the claim is in respect of a breach in Australia of any contract, wherever made, whether or not that ~~begins an action~~breach was preceded or accompanied by a breach outside Australia that rendered impossible the performance of that part of the contract that ought to have been performed in Australia;

(d) when the claim —

(i) is for an injunction to compel or restrain the performance of any act in Australia; or

(ii) is for interim or ancillary relief in respect of any matter or thing in or connected with Australia, if— that relief is sought in relation to judicial or arbitral proceedings commenced or to be commenced, or an arbitration agreement made, in or outside Australia (including, without limitation, interim or ancillary relief in relation to any proceedings under the *International Arbitration Act 1974* (Commonwealth) or the *Commercial Arbitration Act 2012*); or

(a) the (iii) without limiting subparagraph (ii), is an application for a freezing order or ancillary order under Order 52A in respect of any matter or thing in or connected with Australia;

(e) when the subject matter of the action, so far as it concerns the party to be served, is

(i) claim is land (with or without rents or profits) or other property situate within the State, orsituated in Australia, or any act, deed, will, instrument, or thing affecting the land or property, or the proceeding is for the perpetuation of testimony relating to land within the State; or

(ii) any shares or stock of a corporation or joint stock company having its principal place of business within the State;

(b) any Act, deed, will, contract, obligation or liability affecting land or hereditaments situate within the State is sought to be construed, rectified, set aside or enforced in the actionproperty;

(c) in the action (f) when the claim relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged according to Australian law;

(g) when any relief is sought against ~~a~~any person domiciled or ordinarily ~~resident within the jurisdiction;~~or habitually resident in Australia (whether present in Australia or not);

(~~d~~) h) when any person outside Australia is —

(i) a necessary or proper party to a proceeding properly brought against another person served or to be served (whether in Australia or outside Australia) under any other provision of these rules; or

(ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by a proceeding in the ~~action~~Court;

(i) when the claim is for the administration of the ~~personal~~ estate of any deceased person~~,~~ who at the time of ~~his~~ death was domiciled ~~within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Western Australia or if the action~~in Australia or is for any relief or remedy which might be obtained in any such ~~action as aforesaid~~proceeding;

(~~e~~) j) when the ~~action is one brought~~claim arises under an Australian enactment and —

(i) any act or omission to which the claim relates was done or occurred in Australia; or

(ii) any loss or damage to which the claim relates was sustained in Australia; or

(iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside Australia in the circumstances alleged; or

(iv) the enactment expressly or by implication confers jurisdiction on the Court over persons

outside Australia (in which case any requirements of the enactment relating to service must be complied with);

(k) when the person to be served has submitted to the jurisdiction of the Court;

(l) when a claim is made for restitution or for the remedy of constructive trust and the person to be served's alleged liability arises out of an act or omission that was done or occurred wholly or partly in Australia;

(m) when it is sought to recognise or enforce~~, rescind, dissolve, annul, or otherwise affect a contract, or to recover damages or obtain other relief~~ any judgment;

(n) when the claim is founded on a cause of action arising in Australia;

(o) when the claim affects the person to be served in respect of the ~~breach of a contract, being in either case a contract~~ person's membership of a corporation incorporated in Australia, or of a partnership or an association formed or carrying on any part of its affairs in Australia;

~~(i) made within~~p) when the ~~jurisdiction; or~~

~~(ii) made by or through an agent trading or residing within~~claim concerns the ~~jurisdiction on behalf~~construction, effect or enforcement of ~~a principal trading or residing out of the jurisdiction; or~~an Australian enactment;

~~(iii) which by its terms~~q) when the claim —

(i) relates to an arbitration held in Australia or ~~implications is~~ governed by ~~the~~Australian law ~~of Western Australia;~~; or

~~(f) the action is brought in respect of a breach committed within the jurisdiction of a contract wherever made and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach~~

committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;

(g) in the action an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed whether damages are or are not also sought in respect thereof;

(h) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction;

(i) the action is for the recovery of taxes or duty (with or without interest or fines for default in payment thereof) which have been imposed or become due on or in respect of property situate within the jurisdiction;

(j) the action is by a mortgagee or mortgagor in relation to a mortgage of personal property situate within the jurisdiction and seeks relief of the nature or kind following, that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee, but does not seek (unless and except so far as permissible under paragraph (e)) any personal judgment or order for payment of any moneys due under the mortgage;

(k) the action is founded on a tort committed within the jurisdiction;

(l) the action is properly brought under the *Civil Aviation (Carriers' Liability) Act 1959* of the Commonwealth.

(2) In subrule (1)(j) the expression ***personal property situate within the jurisdiction*** means personal property, which on the death of an owner thereof intestate, would form subject matter for the grant of letters of administration to his estate in Western Australia; the expression ***mortgage*** means a mortgage charge or lien of any description; the expression ***mortgagee*** means a party

for the time being entitled to or interested in a mortgage; and the expression ***mortgagor*** means a party for the time being entitled to or interested in property subject to a mortgage.

[Rule 1 amended: Gazette 3 Jul 2009 p. 2684; 28 Jun 2011 p. 2552 and 2553; 12 Jun 2012 p. 2448 and 2453.]

2. Service out of jurisdiction of writ etc. as to contract

Where it appears to the Court that a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may grant leave to serve a person outside Australia with a writ, or notice of a writ, that begins such an action.

[Rule 2 amended: Gazette 3 Jul 2009 p. 2684; 12 Jun 2012 p. 2448 and 2453.]

*[**3.** Deleted: Gazette 12 Jun 2012 p. 2448.]*

4. Application for leave under r. 1 or 2

(1) (ii) is to enforce in Australia an arbitral award wherever made; or

(iii) is for orders necessary or convenient for carrying into effect in Australia the whole or any part of an arbitral award wherever made;

(r) when the claim is for relief relating to the custody, guardianship, protection or welfare of a minor present in Australia or who is domiciled or ordinarily or habitually resident in Australia (whether present in Australia or not);

(s) when the claim, so far as concerns the person to be served, falls partly within 1 or more of the above paragraphs and, as to the residue, within 1 or more of the others of the above paragraphs.

Note for this rule:

If a proceeding is commenced in the Court and originating process is served outside Australia under this rule but the Court later decides that

it is more appropriate that the proceeding be determined by a court of another Australian jurisdiction, the Court may transfer the proceeding to that other court under the *Jurisdiction of Courts (Cross-vesting) Act 1987* and may make an order for costs against the party who commenced the proceeding in the Court rather than in the transferee court.

[Rule 5 inserted: SL 2024/38 r. 8.]

6. When allowed with leave

(1) In any proceeding when service is not allowed under rule 5, an originating process may be served outside Australia with the leave of the Court.

(2) An application for ~~a grant of~~ leave under ~~rule 1 or 2~~this rule must be made on notice to every party other than the person intended to be served.

(3) A sealed copy of every order made under this rule must be served with the document to which it relates.

(4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the Court assuming jurisdiction, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is an Australian citizen.

(5) The Court may grant an application for leave if satisfied that —

(a) the claim has a real and substantial connection with Australia; and

(b) Australia is an appropriate forum for the trial of the proceeding; and

(c) in all the circumstances the Court should assume jurisdiction.

[Rule 6 inserted: SL 2024/38 r. 8.]

7. Court's discretion whether to assume jurisdiction

(1) On application by a person on whom an originating process has been served outside Australia, the Court may dismiss or stay the proceeding or set aside service of the originating process.

(2) Without limiting subrule (1), the Court may make an order under this rule if satisfied —

(a) that ~~states —~~service outside Australia of the originating process is not authorised by these rules; or

(~~a~~b) that ~~in~~ the ~~deponent's belief,~~Court is an inappropriate forum for the trial of the proceeding; or

(c) that the claim has insufficient prospects of success to warrant putting the person served outside Australia to the time, expense and trouble of defending the claim.

[Rule 7 inserted: SL 2024/38 r. 8.]

8. Notice to person served outside Australia

If a person is to be served outside Australia with an originating process, the person must also be served with a notice in Form 5AB informing the person of —

(a) the scope of the jurisdiction of the Court in respect of claims against persons who are served outside Australia; and

(b) the grounds alleged by the plaintiff ~~has a good cause of action~~to found jurisdiction; and

(~~b) where, outside Australia, the person~~ c) the person's right to ~~be served is or probably may be.~~

~~(2) No such leave shall be granted unless it shall be made sufficiently to appear to~~apply for an order setting aside the ~~Court that the case is a proper one for~~ originating process or its service ~~out of~~on the person or dismissing or staying the ~~jurisdiction under this Order~~proceeding.

~~*[Rule 4 amended: Gazette 15 Jun 1973 p. 2247; 12 Jun 2012 p. 2448.]*~~

~~5~~ *[Rule 8 inserted: SL 2024/38 r. 8.]*

9. Time for entering appearance

~~(1) An order made under this Order granting leave to serve a writ~~ Except when the Court otherwise orders, a defendant who has been served outside Australia must ~~limit the time within which the person to be served can~~ enter an appearance within 42 days from the date of service.

~~(2) In fixing that limit, the Court must have regard to the place or country where the writ is to be served.~~

~~(3) If the writ is to be served under the convention referred to in Order 11A, subrule (1) is subject to that Order.~~

[Rule ~~5~~ 9 inserted: ~~Gazette 12 Jun 2012 p. 2449~~SL 2024/38 r. 8.]

~~*[6. Deleted: Gazette 12 Jun 2012 p. 2449.]*~~

~~**7. Other documents, service of outside Australia**~~

~~The Court may grant leave to serve a person outside Australia with any originating process, other than a writ, or with any summons, order or notice in any proceedings duly instituted, whether by writ of summons or otherwise, and rules 1A, 4 and 5, with any necessary changes, apply to such service.~~

~~*[Rule 7 inserted: Gazette 12 Jun 2012 p. 2449.]*~~

~~**8. Saving of existing practice**~~

~~Nothing contained in this Order shall prejudice or affect any practice or power of the Court under which, when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without purporting to exercise jurisdiction over any person out of the~~

~~jurisdiction, cause such person to be informed of the nature or existence of the proceedings, with a view to such person having an opportunity of claiming, opposing, or otherwise intervening.~~

~~9~~10. Leave to proceed where no appearance by person

(1) If an originating process is served on a person outside Australia and the person does not enter an appearance, the party serving the document may not proceed against the person served except by leave of the Court.

(2) An application for leave under subrule (1) may be made without serving notice of the application on the person served with the originating process.

[Rule 10 inserted: SL 2024/38 r. 8.]

11. Service ~~abroad~~of other documents outside Australia

Any document other than an originating process may be served outside Australia with the leave of the Court, which may be given with any directions that the Court thinks fit.

[Rule 11 inserted: SL 2024/38 r. 8.]

12. Mode of service

A document to be served outside Australia need not be personally served on a person so long as it is served on the person in accordance with the law of the country in which service is effected.

[Rule 12 inserted: SL 2024/38 r. 8.]

Division 4 — Service through foreign or diplomatic officials outside Australia in non-Convention countries

~~*(1)*~~ *[Heading inserted: SL 2024/38 r. 8.]*

13. Application of Division

This ~~rule does not apply~~Division applies to service outside Australia in~~—~~

~~(a) the United Kingdom;~~

~~(b) any~~ non-Convention country ~~listed in Schedule 3 to the *British Nationality Act 1981* (United Kingdom);~~.

~~(c) any British possession.~~

~~*(2) If leave is granted to serve a writ on a person in a foreign country*~~ *[Rule 13 inserted: SL 2024/38 r. 8.]*

14. Method of service of originating process and Form 5AB

A person may serve an originating process and notice in Form 5AB in a ~~convention~~non-Convention country through —

(a) if a Convention about ~~such~~foreign service applies to the country and to Australia or ~~this~~the State~~, the notice may be served —~~ —

(~~a) through~~ i) the judicial authorities of that country; or

~~(b) through a British or~~ (ii) an Australian diplomatic or consular agent in that country ~~(~~, subject to ~~any~~a provision of the ~~convention~~Convention as to the nationality of persons who may be so served~~).~~;

~~(3) If leave is granted to serve a writ on a person in a country and there is no such convention, the notice may be served —~~

~~(a) through~~ or

(b) in any other case —

(i) if the government of that country~~, if the government~~ is willing to effect service — the government; or

~~(b) through a British or~~ (ii) an Australian diplomatic or consular agent in that country ~~except where~~, unless service through such an authority is contrary to the law of that country.

~~(4~~ *[Rule 14 inserted: SL 2024/38 r. 8.]*

15. Request for service of originating process

(1) A person who wishes to serve ~~a writ by a method described in subrule (2) or (3)~~an originating process under this Division must file~~.~~ —

(a) a letter of request for service under this Division of the ~~writ by that method, together with~~ originating process; and

(b) a copy of the ~~writ and, unless~~originating process and the Form 5AB to be served under rule 8; and

(c) if the request and the copy of the ~~writ~~originating process are not filed electronically~~,~~ — an additional copy of the ~~writ~~originating process, and each other document to be served, for each person to be served~~.~~; and

~~(5) Every copy of a writ filed under subrule (4) shall be accompanied by a translation of the writ in the official language of the country in which service is to be effected, or if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected: Provided that this subrule does not apply where the copy of the writ is to be served in a country the official language of which is, or the official languages of which include English, or is to be served by a British or Australian diplomatic or consular agent on a British subject or an Australian citizen, unless the Convention expressly requires the copy to be accompanied by a translation.~~

~~(6) Every translation required by subrule (5) shall be certified~~ (d) an undertaking by the person making ~~it to be~~ the request to be personally responsible

for all expenses incurred in respect of the service requested.

(2) If leave is not required to serve the originating process under rule 5, the letter of request for service filed under subrule (1)(a) must state the paragraph in rule 5 under which leave is not required.

(3) If English is not an official language of the country where the originating process will be served under this Division, a person who wishes to serve the originating process must also file —

(a) a translation of the originating process and Form 5AB in an official language of the country; and

(b) a certificate (both in English and the official language) by the person (the ***translator***) who translated the originating process that —

(i) states the translator's name and address; and

(ii) states the translator's qualifications to translate the originating process and Form 5AB; and

(iii) certifies that the translation of the originating process and Form 5AB is a correct translation~~, and the certificate shall state his full name and address and his qualifications for making the translation.~~.

~~(7)~~ *[Rule 15 inserted: SL 2024/38 r. 8.]*

16. Serving documents under Division

The ~~document~~documents filed under rule 15 that are to be served ~~shall~~on a person outside Australia must be —

(a) sealed with the seal of the Supreme Court; and ~~shall be~~

(b) forwarded by the Principal Registrar to the Attorney General ~~for~~of Western Australia for transmission through the diplomatic channel to the ~~foreign~~ country where the documents are to be served.

~~*(8) An*~~ *[Rule 16 inserted: SL 2024/38 r. 8.]*

17. Certification of service taken to be proof of service

(1) This rule applies if an official certificate establishing that documents have been served, and when they have been served, under this Division is transmitted to the Court~~ —~~

(a) through the diplomatic channel by ~~the British or~~an Australian diplomatic or consular agent~~,~~; or

(b) by ~~the~~a foreign government or judicial ~~authorities establishing the fact and the date of the service of the document shall be deemed to be sufficient proof of such service, and shall be filed of record and be equivalent to~~ authority responsible for serving the documents.

(2) The official certificate —

(a) must be placed on the file; and

(b) is taken to be an affidavit of service ~~within~~for the ~~requirements~~purposes of these rules ~~in that behalf. Any~~.

(3) A document purporting to be ~~such a~~ an official certificate ~~shall, until~~is taken to be a certificate unless the contrary is proved~~, be deemed to be such a certificate~~.

~~(9) Where an official certificate is produced pursuant to subrule (8) in relation to the service of a writ under this rule, no indorsement of service under Order 9 rule 1(4) shall be required.~~

~~*[Rule 9 amended: Gazette 14 Dec 1979 p. 3869; 3 Jul 2009 p. 2685; 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2449-50; 27 Feb 2018 p. 556.]*~~

~~**10. Service abroad, general and saving provisions**~~

~~(1) Subject to rule 9(9), to the following provisions of this rule and to any direction given by the Court as to the manner in which the writ shall be served or brought to the notice of the person, Order 9 rule 1 and Order 72 rule 4 apply in relation to the~~

~~service of a writ, notwithstanding it is to be served outside Australia.~~

~~(2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.~~

~~*(3) A writ to be served*~~ *[Rule 17 inserted: SL 2024/38 r. 8.]*

18. Paying expenses

(1) The Principal Registrar may give the person who gave an undertaking as to expenses under rule 15(1)(d) a written notice stating —

(a) the expenses incurred in respect of the service of the documents outside Australia~~—~~; and

~~(a) need not be served personally on the person required to be served, if it is served on him~~ (b) if the Principal Registrar directs the manner in which the payment is to be made under subrule (2) —

(i) that the person must pay those expenses consistently with the person's undertaking in accordance with the ~~law of the country in which service is effected~~direction; and

~~(b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 9.~~

~~(4) Rule 9 shall~~ (ii) the person must provide evidence, such as a receipt, to the Principal Registrar showing that the payment was made in accordance with the direction;

and

(c) if paragraph (b) does not apply ~~to or render invalid or insufficient any mode of service in any foreign country with~~ — that the person must pay those expenses consistently with the person's undertaking within the

period of 14 days after the day on which the person receives the written notice to the Central Office; and

(d) that, if the person fails to pay those expenses in accordance with the notice, the Court may make an order for the payment of the expenses or to stay proceedings under this rule.

(2) The Principal Registrar may direct that the payment of expenses referred to in rule 15(1)(d) must be paid to a particular person, or in a particular manner.

(3) If the person does not pay the expenses in accordance with the notice, the Court may —

(a) stay proceedings until the expenses are paid to the Central Office; or

(b) make an order requiring the person to pay the expenses.

[Rule 18 inserted: SL 2024/38 r. 8.]

19. Other methods of service outside Australia not excluded by Division

Despite another provision of this Division, a document may be served outside Australia if —

(a) the document is served in a non-Convention ~~has been~~country where a convention about foreign service applies to the country and to Australia or ~~shall be made~~ the State; and

(b) the manner in which the document is served is- —

(i) not expressly excluded by the convention; and

(ii) otherwise valid or sufficient according to the procedure of the Supreme Court ~~and which is not expressly excluded by the Convention~~.

[Rule ~~10 amended: Gazette 12 Jun 2012 p. 2450.~~]

~~**11. Undertaking to pay expenses of service**~~

~~Every request filed under rule 9(4) must contain an undertaking by the person making the request to be responsible personally for all expenses incurred in respect of the service requested, and on receiving due notification of the amount of those expenses to pay that amount into the Central Office forthwith.~~

~~*[Rule 11 amended: Gazette 27 Feb 2018 p. 556*~~19 *inserted: SL 2024/38 r. 8.]*

Order 11 — Service of foreign process

*[**1A.** Deleted: Gazette 3 Jul 2009 p. 2685.]*

1. Terms used

In this Order —

official channel includes a consular or other authority of the foreign country concerned;

process includes a citation.

2A. Application of this Order

(1) If the Court receives a letter of request for service of process on a person in this State from —

(a) a court or tribunal; or

(b) a consular or other authority,

of a Convention country ~~(as defined in Order 11A rule 1),~~ then, unless Order 11A Division 4 applies, rule 2 or 3, as the case requires, and rules 4 and 5 apply and Order 11A Division 4 does not.

(2) If Order 11A Division 4 applies to a request referred to in subrule (1), rules 2 to 5 do not apply.

(3) A letter of request referred to in subrule (1), any document that accompanies the letter of request and any other document to be filed for the purposes of this Order cannot be filed electronically.

[Rule 2A inserted: Gazette 3 Jul 2009 p. 2685; amended: Gazette 27 Feb 2018 p. 556; SL 2024/38 r. 9.]

2. Service pursuant to letter of request for service

(1) This rule applies to the service of any process required to be served in any civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of

request from such a tribunal for service on a person in Western Australia of any such process sent with the letter is received by the Principal Registrar through an official channel.

(2) In order that service may be effected under this rule the letter of request must be accompanied by a translation thereof in English, by 2 copies of the process to be served and by 2 copies of a translation of the process in English.

(3) Subject to rule 4 and to any Act which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

(4) The Principal Registrar shall transmit through the official channel to the tribunal making the request, a certificate establishing the fact, and the date of service, or stating the reasons for which it has not been possible to effect service, and in the certificate shall certify the amount properly payable for effecting or attempting to effect service. The certificate shall be sealed with the seal of the Supreme Court.

[Rule 2 amended: Gazette 14 Dec 1979 p. 3869; 12 Jun 2012 p. 2450.]

3. Service under Convention

(1) This rule applies to the service of any process required to be served in any civil or commercial proceedings pending before a court or other tribunal of a foreign country with which a Convention in that behalf has been or shall be made and extended to Australia or the State of Western Australia where a letter of request from a consular or other authority of that country requesting service on a person in Western Australia of any such process sent with the letter is received by the Principal Registrar.

(2) In order that service may be effected under this rule the letter of request must be accompanied by a copy of a translation in English of the process to be served.

(3) Subject to any Act which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

(4) When service of the process has been effected or if attempts to effect service have failed, the process server shall leave with the Principal Registrar an affidavit made by the person who served or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting or attempting to effect service.

(5) The Principal Registrar shall transmit to the consular or other authority by whom the request for service was made a certificate certifying that the process or a copy thereof as the case may be, was served on the person, at the time and in the manner specified in the certificate, or if such be the case, that service of the process could not be effected for the reason so specified, and certifying the amount properly payable for effecting or attempting to effect, service. The certificate shall be sealed with the seal of the Supreme Court.

[Rule 3 amended: Gazette 14 Dec 1979 p. 3869; 12 Jun 2012 p. 2450 and 2453.]

4. Service to be through sheriff

Service of process under the provisions of this Order shall be effected through the sheriff by the process server whom he may from time to time appoint for that purpose, or his authorised agent.

5. Consequential orders

Upon the application of the State Solicitor, with the consent of the Attorney General, the Court may make all such orders for substituted service or otherwise as are necessary to give effect to the rules of this Order.

[Rule 5 amended: Gazette 19 Apr 2005 p. 1298.]

Order 11A — Service under the Hague Convention

[Heading inserted: Gazette 3 Jul 2009 p. 2685.]

Division 1 — Preliminary

[Heading inserted: Gazette 3 Jul 2009 p. 2685.]

Note:

1. This Order forms part of a scheme to implement Australia's obligations under the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*. Under the Convention, the Attorney-General's Department of the Commonwealth is designated as the Central Authority (under Article 2 of the Convention) and certain courts and government departments are, for certain purposes, designated as "other" or "additional" authorities (under Article 18 of the Convention).
2. This Order provides (in Division 2) for service in overseas Convention countries of local judicial documents (documents that relate to proceedings in the Court) and (in Division 3) for default judgment in proceedings in the Court after service overseas of such a document. Division 4, on the other hand, deals with service by the Court or arranged by the Court in its role as an other or additional authority, of judicial documents emanating from overseas Convention countries.
3. Information about the Hague Convention, including a copy of the Hague Convention, a list of all Contracting States, details of declarations and reservations made under the Hague Convention by each of those States and the names and addresses of the central and other authorities of each of those States can be found at the website of the Hague Conference on Private International Law.

[Note amended: SL 2020/242 r. 4.]

1. Terms used

In this Order —

additional authority, for a Convention country, means an authority that is —

(a) for the time being designated by that country, under Article 18 of the Hague Convention, to be an authority (other than the Central Authority) for that country; and

(b) competent to receive requests for service abroad emanating from Australia;

applicant, for a request for service abroad or a request for service in this jurisdiction, means the person on whose behalf service is requested;

Central Authority, for a Convention country, means an authority that is for the time being designated by that country, under Article 2 of the Hague Convention, to be the Central Authority for that country;

certificate of service means a certificate of service that has been completed for the purposes of Article 6 of the Hague Convention;

certifying authority, for a Convention country, means the Central Authority for the country or some other authority that is for the time being designated by the country, under Article 6 of the Hague Convention, to complete certificates of service in the form annexed to the Hague Convention;

civil proceedings means any judicial proceedings in relation to civil or commercial matters;

~~***Convention country*** means a country, other than Australia, that is a party to the Hague Convention;~~

defendant, for a request for service abroad of an initiating process, means the person on whom the initiating process is requested to be served;

foreign judicial document means a judicial document that originates in a Convention country and that relates to civil proceedings in a court of that country;

forwarding authority —

(a) for a request for service of a foreign judicial document in this jurisdiction — the authority or judicial officer of the Convention country in which the document originates that forwards the request (being an authority or judicial officer that is competent under the law of that country to forward a request for service under Article 3 of the Hague Convention); or

(b) for a request for service of a local judicial document in a Convention country — the registrar;

~~***Hague Convention*** means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965;~~

initiating process means any document by which proceedings (including proceedings on any cross-claim or third party notice) are commenced;

local judicial document means a judicial document that relates to civil proceedings in the Court;

request for service abroad means a request for service in a Convention country of a local judicial document mentioned in rule 4(1);

request for service in this jurisdiction means a request for service in this jurisdiction of a foreign judicial document mentioned in rule 13(1);

this jurisdiction means Western Australia.

[Rule 1 inserted: Gazette 3 Jul 2009 p. 2686-7; amended: SL 2024/38 r. 10.]

2. Provisions of this Order to prevail

The provisions of this Order prevail to the extent of any inconsistency between those provisions and any other provisions of these rules.

[Rule 2 inserted: Gazette 3 Jul 2009 p. 2687.]

Division 2 — Service abroad of local judicial documents

[Heading inserted: Gazette 3 Jul 2009 p. 2687.]

3. Application of this Division

(1) Subject to subrule (2), this Division applies to service in a Convention country of a local judicial document.

(2) This Division does not apply if service of the document is effected, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in Article 8 of the Hague Convention.

[Rule 3 inserted: Gazette 3 Jul 2009 p. 2687.]

4. Application for request for service abroad

(1) A person may apply to the registrar, in the registrar's capacity as a forwarding authority, for a request for service in a Convention country of a local judicial document.

(1A) If the local judicial document is a document of the Court, the application, and any other document to be filed for the purposes of this rule, must be filed electronically.

(1B) If the local judicial document is not a document of the Court, the application, and any other document to be filed for the purposes of this rule, cannot be filed electronically.

(2) The application must be accompanied by each of the following documents (if the application is filed electronically) or 3 copies of each of those documents (if the application is not filed electronically) —

(a) a draft request for service abroad, which must be in the form of Form 5A Part 1;

(b) the document to be served;

(c) a summary of the document to be served, which must be in the form of Form 5B;

(d) if, under Article 5 of the Hague Convention, the Central Authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, the official language or one of the official languages of that country, a translation into that language of both the document to be served and the summary of the document to be served.

(3) The application must contain a written undertaking to the Court, signed by the legal practitioner on the record for the applicant in the proceedings to which the local judicial document relates or, if there is no legal practitioner on the record for the applicant in those proceedings, by the applicant —

(a) to be personally liable for all costs that are incurred —

(i) by the employment of a person to serve the documents to be served, being a person who is qualified to do so under the law of the Convention country in which the documents are to be served; or

(ii) by the use of any particular method of service that has been requested by the applicant for the service of the documents to be served;

and

(b) to pay the amount of those costs to the registrar within 28 days after receipt from the registrar of a notice specifying the amount of those costs under rule 6(3~~);~~), or another period as directed; and

(c) to give such security for those costs as the registrar may require.

(4) The draft request for service abroad —

(a) must be completed (except for signature) by the applicant; and

(b) must state whether (if the time fixed for entering an appearance in the proceedings to which the local judicial document relates expires before service is effected) the applicant wants service to be attempted after the expiry of that time; and

(c) must be addressed to the Central Authority, or to an additional authority, for the Convention country in which the person is to be served; and

(d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority.

(5) Any translation required under subrule (2)(d) must bear a certificate (in both English and the language used in the translation) signed by the translator stating —

(a) that the translation is an accurate translation of the documents to be served; and

(b) the translator's full name and address and his or her qualifications for making the translation.

[Rule 4 inserted: Gazette 3 Jul 2009 p. 2687-9; amended: Gazette 27 Feb 2018 p. 557; SL 2022/74 r. ~~15~~15; SL 2024/38 r. 11.]

5. How application to be dealt with

(1) If satisfied that the application and its accompanying documents comply with rule 4, the registrar —

(a) must sign the request for service abroad; and

(b) must forward 2 copies of the relevant documents —

(i) if the applicant has asked for the request to be forwarded to a nominated additional authority for the Convention country in which service of the document is to be effected — to the nominated additional authority; or

(ii) in any other case — to the Central Authority for the Convention country in which service of the document is to be effected.

(2) The relevant documents mentioned in subrule (1)(b) are the following —

(a) the request for service abroad (duly signed);

(b) the document to be served;

(c) the summary of the document to be served;

(d) if required under rule 4(2)(d), a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c).

(3) If not satisfied that the application or any of its accompanying documents complies with rule 4, the registrar must inform the applicant of the respects in which the application or document fails to comply.

[Rule 5 inserted: Gazette 3 Jul 2009 p. 2689.]

6. Procedure on receipt of certificate of service

(1) Subject to subrule (5), on receipt of a certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, the registrar —

(a) must arrange for the original certificate to be filed in the proceedings to which the document relates; and

(b) must send a copy of the certificate to —

(i) the legal practitioner on the record for the applicant in those proceedings; or

(ii) if there is no legal practitioner on the record for the applicant in those proceedings — the applicant.

(2) For the purposes of subrule (1), a certificate of service is in due form if —

(a) it is in the form of Form 5A Part 2; and

(b) it has been completed by a certifying authority for the Convention country in which service was requested; and

(c) if the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority, it has been so countersigned.

(3) On receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subrule (1),

the registrar must send to the legal practitioner or applicant who gave the undertaking mentioned in rule 4(3) a notice specifying the amount of those costs.

(4) For the purposes of subrule (3), a statement of costs is in due form if —

(a) it relates only to costs of a kind mentioned in rule 4(3)(a); and

(b) it has been completed by a certifying authority for the Convention country in which service was requested.

(5) Subrule (1) does not apply unless —

(a) adequate security to cover the costs mentioned in subrule (3) has been given under rule 4(3)(c); or

(b) to the extent to which the security so given is inadequate to cover those costs, an amount equal to the amount by which those costs exceed the security so given has been paid to the registrar.

[Rule 6 inserted: Gazette 3 Jul 2009 p. 2689-90; amended: SL 2022/74 r. 15.]

7. Payment of costs

(1) On receipt of a notice under rule 6(3) in relation to the costs of service, the legal practitioner or applicant, as the case may be, must pay into the Central Office, or pay otherwise as directed, the amount specified in the notice as the amount of those costs.

(2) If the legal practitioner or applicant fails to pay that amount within 28 days after receiving the notice —

(a) except by leave of the Court, the applicant may not take any further step in the proceedings to which the local judicial document relates until those costs are paid to the registrar; and

(b) the registrar may take such steps as are appropriate to enforce the undertaking for payment of those costs.

[Rule 7 inserted: Gazette 3 Jul 2009 p. 2690-1; amended: Gazette 27 Feb 2018 p. 557; SL 2022/74 r. ~~15~~15; SL 2024/38 r. 12.]

8. Evidence of service

A certificate of service in relation to a local judicial document (being a certificate in due form within the meaning of rule 6(2)) that certifies that service of the document was effected on a specified date, is, in the absence of any evidence to the contrary, sufficient proof that —

(a) service of the document was effected by the method specified in the certificate on that date; and

(b) if that method of service was requested by the applicant, that method is compatible with the law in force in the Convention country in which service was effected.

[Rule 8 inserted: Gazette 3 Jul 2009 p. 2691.]

Division 3 — Default judgment following service abroad of initiating process

[Heading inserted: Gazette 3 Jul 2009 p. 2691.]

9. Application of this Division

This Division applies to civil proceedings for which an initiating process has been forwarded following a request for service abroad to the Central Authority (or to an additional authority) for a Convention country.

[Rule 9 inserted: Gazette 3 Jul 2009 p. 2691.]

10. Restriction on power to enter default judgment if certificate of service filed

(1) This rule applies if —

(a) a certificate of service of initiating process has been filed in the proceedings (being a certificate in due form within the meaning of rule 6(2)) that states that service has been duly effected; and

(b) the defendant has not appeared or filed a notice of address for service.

(2) In circumstances to which this rule applies, default judgment may not be given against the defendant unless the Court is satisfied that —

(a) the initiating process was served on the defendant —

(i) by a method of service prescribed by the internal law of the Convention country for the service of documents in domestic proceedings on persons who are within its territory; or

(ii) if the applicant requested a particular method of service (being a method under which the document was actually delivered to the defendant or to his or her residence) and that method is compatible with the law in force in that country, by that method; or

(iii) if the applicant did not request a particular method of service, in circumstances where the defendant accepted the document voluntarily;

and

(b) the initiating process was served in sufficient time to enable the defendant to enter an appearance in the proceedings.

(3) In subrule (2)(b) —

sufficient time means —

(a) 42 days from the date specified in the certificate of service in relation to the initiating process as the date on which service of the process was effected; or

(b) such lesser time as the Court considers, in the circumstances, to be a sufficient time to enable the defendant to enter an appearance in the proceedings.

[Rule 10 inserted: Gazette 3 Jul 2009 p. 2691-2.]

11. Restriction on power to enter default judgment if certificate of service not filed

(1) This rule applies if —

(a) a certificate of service of initiating process has not been filed in the proceedings; or

(b) a certificate of service of initiating process has been filed in the proceedings (being a certificate in due form within the meaning of rule 6(2)) that states that service has not been effected,

and the defendant has not appeared or filed a notice of address for service.

(2) If this rule applies, default judgment may not be given against the defendant unless the Court is satisfied that —

(a) the initiating process was forwarded to the Central Authority, or to an additional authority, for the Convention country in which service of the initiating process was requested; and

(b) a period that is adequate in the circumstances (being a period of not less than 6 months) has elapsed since the date on which the initiating process was so forwarded; and

(c) every reasonable effort has been made —

(i) to obtain a certificate of service from the relevant certifying authority; or

(ii) to effect service of the initiating process,

as the case requires.

[Rule 11 inserted: Gazette 3 Jul 2009 p. 2692-3.]

12. Setting aside judgment in default of appearance

(1) This rule applies if default judgment has been entered against the defendant in proceedings to which this Division applies.

(2) If this rule applies, the Court may set aside the judgment on the application of the defendant if it is satisfied that the defendant —

(a) without any fault on the defendant's part, did not have knowledge of the initiating process in sufficient time to defend the proceedings; and

(b) has a prima facie defence to the proceedings on the merits.

(3) An application to have a judgment set aside under this rule may be filed —

(a) at any time within 12 months after the date on which the judgment was given; or

(b) after the expiry of that 12-month period, within such time after the defendant acquires knowledge of the judgment as the Court considers reasonable in the circumstances.

(4) Nothing in this rule affects any other power of the Court to set aside or vary a judgment.

[Rule 12 inserted: Gazette 3 Jul 2009 p. 2693.]

Division 4 — Local service of foreign judicial documents

[Heading inserted: Gazette 3 Jul 2009 p. 2693.]

13. Application of this Division

(1) This Division applies to service in this jurisdiction of a foreign judicial document in relation to which a due form of request for service has been forwarded to the Court —

(a) by the Attorney-General's Department of the Commonwealth, whether in the first instance or following a referral under rule 14; or

(b) by a forwarding authority.

(2) Subject to subrule (3), a request for service in this jurisdiction is in due form if it is in the form of Form 5A Part 1 and is accompanied by the following documents —

(a) the document to be served;

(b) a summary of the document to be served, which must be in the form of Form 5B;

(c) a copy of the request and of each of the documents mentioned in paragraphs (a) and (b);

(d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

(3) Any translation required under subrule (2)(d) must bear a certificate (in English) signed by the translator stating —

(a) that the translation is an accurate translation of the document; and

(b) the translator's full name and address and his or her qualifications for making the translation.

(4) A request for service referred to in subrule (2), and any other document to be filed for the purposes of this rule, cannot be filed electronically.

[Rule 13 inserted: Gazette 3 Jul 2009 p. 2693-4; amended: Gazette 27 Feb 2018 p. 557.]

14. Certain documents to be referred back to Attorney-General's Department of Commonwealth

If, after receiving a request for service in this jurisdiction, the registrar is of the opinion —

(a) that the request does not comply with rule 13; or

(b) that the document to which the request relates is not a foreign judicial document; or

(c) that compliance with the request may infringe Australia's sovereignty or security; or

(d) that the request seeks service of a document in some other State or Territory of the Commonwealth,

the registrar must refer the request to the Attorney-General's Department of the Commonwealth together with a statement of his or her opinion.

Note:

The Attorney-General's Department of the Commonwealth will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

[Rule 14 inserted: Gazette 3 Jul 2009 p. 2694.]

15. Service

(1) Subject to rule 14, on receipt of a request for service in this jurisdiction, the Court must arrange for the service of the relevant documents in accordance with the request.

(2) The relevant documents mentioned in subrule (1) are the following —

(a) the document to be served;

(b) a summary of the document to be served;

(c) a copy of the request for service in this jurisdiction;

(d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

(3) Service of the relevant documents may be effected by any of the following methods of service —

(a) by a method of service prescribed by the law in force in this jurisdiction —

(i) for the service of a document of a kind corresponding to the document to be served; or

(ii) if there is no such corresponding kind of document, for the service of initiating process in proceedings in the Court;

(b) if the applicant has requested a particular method of service and that method is compatible with the law in force in this jurisdiction, by that method;

(c) if the applicant has not requested a particular method of service and the person requested to be served accepts the document voluntarily, by delivery of the document to the person requested to be served.

[Rule 15 inserted: Gazette 3 Jul 2009 p. 2694-5.]

16. Affidavit as to service

(1) If service of a document has been effected pursuant to a request for service in this jurisdiction, the person by whom service has been effected must file an affidavit specifying —

(a) the time, day of the week and date on which the document was served; and

(b) the place where the document was served; and

(c) the method of service; and

(d) the person on whom the document was served; and

(e) the way in which that person was identified.

(2) If attempts to serve a document pursuant to a request for service in this jurisdiction have failed, the person by whom service has been attempted must file an affidavit specifying —

(a) details of the attempts made to serve the document; and

(b) the reasons that have prevented service.

(3) When an affidavit as to service of a document has been filed in accordance with this rule, the registrar —

(a) must complete a certificate of service, sealed with the seal of the Court, on the reverse side of, or attached to, the request for service in this jurisdiction; and

(b) must forward the certificate of service, together with a statement as to the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.

(4) A certificate of service must be —

(a) in the form of Form 5A Part 2; or

(b) if a form of certificate of service that substantially corresponds to Form 5A Part 2 accompanies the request for service, in that accompanying form.

(5) An affidavit as to service to be filed in accordance with this rule cannot be filed electronically.

[Rule 16 inserted: Gazette 3 Jul 2009 p. 2695-6; amended: Gazette 27 Feb 2018 p. 558.]

[Orders 11B and 11C deleted: Gazette 3 Jul 2009 p. 2685.]

Order 12 — Appearance

1. Who may enter appearance

(1) Subject to subrule (2) and to Order 70 rule 2, a defendant to an action may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) enter an appearance in the action and defend it by a legal practitioner or in person.

(2) Except as expressly provided by any Act, a defendant to such an action which is a body corporate may not enter an appearance in the action or defend it otherwise than by a legal practitioner.

[Rule 1 amended: Gazette 7 Oct 1977 p. 3602; 22 Feb 2008 p. 634; 28 Jun 2011 p. 2552; SL 2022/74 r. 15.]

2. How to enter an appearance

(1) To enter an appearance, a defendant must file 2 copies of a Form No. 6 signed by —

(a) the legal practitioner who acts for the defendant; or

(b) if the defendant is self-represented, the defendant.

(2) A memorandum of appearance must, in accordance with Order 71A, state —

(a) the defendant's geographical address; and

(b) the defendant's service details.

(3) If one legal practitioner acts for 2 or more defendants in one action, a memorandum of appearance may relate to more than one of those defendants.

[Rule 2 inserted: Gazette 22 Feb 2008 p. 634; amended: SL 2022/74 r. 15.]

3. Procedure on receipt of requisite documents

On receiving the requisite documents the proper officer must in all cases affix to the copy of the memorandum of appearance an official stamp showing the date on which he received those documents, record the entry of appearance, and then return the copy of the memorandum to the person entering the appearance and the copy memorandum so stamped shall be a certificate that the appearance was entered on the day indicated on the official stamp.

[Rule 3 amended: Gazette 15 Jun 1973 p. 2247; 27 Feb 2018 p. 558.]

4. Appearance to be served on plaintiff

On the day on which a defendant enters an appearance to a writ, the defendant must comply with Order 72 rule 5 for the purposes of serving the stamped copy memorandum returned under rule 3 on the plaintiff in accordance with that Order.

[Rule 4 inserted: Gazette 22 Feb 2008 p. 635.]

5. Late appearance

(1) A defendant may not enter an appearance in an action after judgment has been entered therein except with the leave of the Court.

(2) Except as provided by subrule (1), nothing in these rules or any writ or order thereunder shall be construed as preventing a defendant from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

[Rule 5 amended: Gazette 28 Jun 2011 p. 2552.]

6. Conditional appearance

(1) A defendant in any cause may enter a conditional appearance denying the jurisdiction of the Court or reserving the right to apply to the Court to set aside the originating process, or the notice thereof, or the service of the originating process, or notice thereof, on the ground of any informality or irregularity which renders the originating process or the service thereof invalid, and shall not thereby be deemed to have submitted to such jurisdiction, except as to the costs occasioned by the appearance or by any application under this rule.

(2) The defendant shall forthwith apply to the Court to have the question raised by his conditional appearance decided, and if such an application is not made within 14 days from the entry of the conditional appearance, or if the application be dismissed, the conditional appearance shall, unless the Court otherwise orders, become and operate as an unconditional appearance.

7. Setting aside writ etc. before appearance

A defendant to an action, at any time before entering an appearance in it, may serve notice of motion to —

(a) set aside the writ or service of the writ on the defendant; or

(b) discharge any order that granted leave to serve the writ on the defendant outside Australia.

[Rule 7 inserted: Gazette 12 Jun 2012 p. 2451.]

8. Person not named may defend action for possession of land

Any person not named as a defendant in a writ for the recovery of land may, by leave of the Court, appear and defend on filing an affidavit showing that he has an interest in the land which would be prejudiced or frustrated if an order for recovery were made without his being a party.

9. Person appearing under r. 8 to be named as defendant

Where a person not named as a defendant in a writ for the recovery of land has obtained leave of the Court to appear and defend he shall in all subsequent proceedings be named as a party defendant to the action.

10. Limiting defence in action for possession of land

(1) Any person appearing to a writ for the recovery of land may limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the action and signed by him or his solicitor, and such notice shall be served within 4 days after appearance, and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

(2) The notice mentioned in subrule (1) shall be in accordance with Form No. 7.

[Rule 10 amended: Gazette 28 Jun 2011 p. 2552.]

11. Defendant who wishes to abide by decision of court to file notice of intention to abide

(1) This rule applies if a defendant to an action —

(a) does not intend to take part in the action; and

(b) either —

(i) intends to accept all orders of the Court made in the action; or

(ii) intends to accept all orders of the Court made in the action, other than an order made as to costs.

(2) The defendant must file and serve 2 copies of a Form 8 that are signed by —

(a) the legal practitioner who acts for the defendant; or

(b) if the non-participating party is self-represented, the defendant.

[Rule 11 inserted: SL 2024/38 r. 13.]

Order 13 — Judgment in default of appearance to writ

[Heading inserted: Gazette 16 Nov 2016 p. 5189.]

1. Plaintiff may enter judgment if defendant fails to enter appearance

(1) This Order applies only to proceedings commenced by writ.

(2) If a defendant does not enter an appearance within the time limited for appearing, the plaintiff may enter judgment against that defendant in accordance with this Order.

(3) Judgment must not be entered against a defendant under this Order unless —

(a) an affidavit is filed by or on behalf of the plaintiff proving service of the writ on the defendant and indorsement of service in accordance with Order 9 rule 1(4); or

(b) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that the defendant's solicitor accepts service of the writ on the defendant's behalf.

(4) The Court may require to be satisfied in whatever manner it thinks fit that the defendant has failed to enter an appearance.

[Rule 1 inserted: Gazette 16 Nov 2016 p. 5189-90.]

2. Claim for liquidated demand

(1) If the writ is indorsed with a claim for a liquidated demand only, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may —

(a) enter judgment against the defendant for a sum not exceeding that claimed by the writ in respect of the demand and costs; and

(b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.

(2) On a judgment under this rule, the plaintiff may issue execution on the judgment.

(3) A claim is not excluded from this rule just because part of it is for interest under section 32 of the Act at a rate that is not higher than that payable on judgment debts at the date of the writ.

[Rule 2 inserted: Gazette 16 Nov 2016 p. 5190.]

3. Claims for unliquidated damages

(1) If the writ is indorsed with a claim for unliquidated damages only, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may —

(a) enter judgment against the defendant and obtain an order for directions for the assessment of damages; and

(b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.

(2) On a judgment under this rule —

(a) damages are to be assessed by a master unless the Court orders otherwise; and

(b) judgment after the assessment of damages is to be entered as a default judgment under this rule; and

(c) the plaintiff may issue execution on the judgment.

[Rule 3 inserted: Gazette 16 Nov 2016 p. 5190-1.]

4. Claim relating to detention of goods (excluding mortgage actions)

(1) If the writ is indorsed with a claim relating to the detention of goods only and is not a mortgage action, then, if a defendant

fails to enter an appearance within the time limited for appearing, the plaintiff may —

(a) at the plaintiff's option, enter judgment against the defendant either —

(i) for the delivery of the goods or their value to be assessed and costs; or

(ii) for the value of the goods to be assessed and costs;

and

(b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.

(2) On a judgment under this rule —

(a) the value of the goods is to be assessed by a master unless the Court orders otherwise; and

(b) judgment after the assessment of the value of the goods is to be entered as a default judgment under this rule; and

(c) the plaintiff may issue execution on the judgment, except as provided in subrule (3).

(3) If the judgment is for the delivery of goods it cannot be enforced against any defendant unless judgment has been entered or obtained against all other defendants, if any.

[Rule 4 inserted: Gazette 16 Nov 2016 p. 5191-2.]

5. Claim for possession of land (excluding mortgage actions)

(1) If the writ is indorsed with a claim for possession of land only, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may, on complying with subrule (2) —

(a) enter judgment for possession of the land against the defendant and costs; and

(b) proceed with the action against the other defendants, if any.

(2) In order to enter judgment under this rule, the plaintiff must file a certificate from the plaintiff's solicitor or, if suing in person, an affidavit stating that the plaintiff is not claiming relief of any of the kinds referred to in Order 4AA rule 2(1).

(3) On a judgment under this rule, the plaintiff may issue execution of the judgment, except as provided in subrule (4).

(4) If there is more than one defendant, judgment entered under this rule cannot be enforced against any defendant unless judgment has been entered or obtained against all the defendants.

[Rule 5 inserted: Gazette 16 Nov 2016 p. 5192.]

6. Mortgage actions

(1) If an action begun by writ is a mortgage action, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may, subject to subrules (2) and (3) —

(a) enter judgment against the defendant for the relief sought and costs; and

(b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.

(2) If the writ is indorsed with a claim for relief of a kind referred to in Order 4AA rule 2(1)(a), (b) or (c), in order to enter judgment under this rule, the plaintiff must, after the time limited for appearing has expired —

(a) serve on the defendant a notice in Form 36A with a copy of the writ and Form 4 attached to it; and

(b) not less than 11 days after serving the notice, file but need not serve —

(i) a request to enter default judgment in Form 36B; and

(ii) an affidavit in support that complies with rule 7.

(3) If, in addition to a claim for relief of a kind referred to in Order 4AA rule 2(1)(a), (b) or (c), the writ is also indorsed with a claim for payment of money secured by the mortgage, the Form 36B request to enter default judgment must certify —

(a) the amount owing to the plaintiff under the mortgage as at the date of the filing of the request; and

(b) if the claims include a claim for interest after judgment, the amount of a day's interest.

(4) On a judgment under this rule, the plaintiff may issue execution on the judgment, except as provided in subrule (5).

(5) If there is more than one defendant, judgment entered under this rule cannot be enforced against any defendant unless judgment has been entered or obtained against all the defendants.

(6) Unless the Court orders otherwise, if judgment against a defendant under this rule is for the kind of relief referred to in Order 4AA rule 2(1)(a), within 28 days after service of the judgment the defendant must give the plaintiff possession of the mortgaged property.

[Rule 6 inserted: Gazette 16 Nov 2016 p. 5192-4.]

7. Content of affidavit required by r. 6(2)(b)(ii)

(1) In this rule —

mortgage, ***mortgagee*** and ***mortgagor*** have the meanings given in Order 4AA rule 1.

(2) An affidavit in support filed under rule 6(2)(b)(ii) must —

(a) specify the property that is mortgaged; and

(b) specify the person who is the proprietor of the mortgaged property; and

(c) have attached to it a copy of —

(i) the certificate of title or other document that is evidence of title to the mortgaged property; and

(ii) the mortgage;

and

(d) give particulars of the default or other circumstances that are put forward as entitling the plaintiff to the relief sought, including —

(i) a reference to the provision of the mortgage that the defendant is alleged to have breached; and

(ii) a reference to the provision of the mortgage that entitles the plaintiff to the relief sought; and

(iii) if the writ is indorsed with a claim for payment of money secured by the mortgage, a reference to any non-merger provision of the mortgage that allows the recovery of interest at mortgage rates after judgment; and

(iv) a statement as to whether or not notice of that default or those circumstances is required to be given to the defendant under the mortgage or a written law; and

(v) if notice is required, details of compliance with that requirement;

and

(e) if the claim against the defendant is for sale or possession of mortgaged property —

(i) state that Order 4AA rule 3(2) and Order 13 rule 6(2)(a) have been complied with; and

(ii) give details of every person who, to the best of the plaintiff's knowledge, is in possession of the property and the grounds for concluding that the person is in possession; and

(iii) if one or more of the people who are in possession of the property are tenants of the property, give details of the steps taken by the plaintiff to comply with any applicable requirements of the *Residential Tenancies Act 1987*;

and

(f) specify the following as at the date of the affidavit —

(i) the amount owing to the plaintiff under the mortgage;

(ii) the interest rate (as a percentage) under the mortgage;

(iii) if the claim includes a claim for interest to judgment, the amount of a day's interest;

and

(g) if the plaintiff is claiming costs (other than an order that the defendant pay the plaintiff's costs to be taxed if not agreed), state the basis on which the plaintiff claims those costs.

Example for this subrule:

A claim for indemnity costs must refer to the provision in the mortgage that entitles the plaintiff to those costs.

(3) More than one affidavit may be used to comply with rule 6(2)(b)(ii) and this rule.

[Rule 7 inserted: Gazette 16 Nov 2016 p. 5194-6.]

8. Writs for 2 or more claims to which r. 2 to 6 apply

If the writ is indorsed with 2 or more claims to which rules 2 to 6 apply, and no other claim, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may —

(a) enter against the defendant, in respect of any claim with which the writ is indorsed, whatever judgment the

plaintiff would be entitled to enter under those rules as if that were the only claim made by the plaintiff against the defendant; and

(b) proceed with the action against the other defendants, if any, unless those rules otherwise provide.

[Rule 8 inserted: Gazette 16 Nov 2016 p. 5196-7.]

9. Writs for other claims

(1) If the writ is indorsed with a claim to which none of rules 2 to 6 apply, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may, on complying with subrule (2) —

(a) apply to the Court on motion for judgment against the defendant for the relief sought and costs; and

(b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.

(2) In order to enter judgment under this rule —

(a) if the statement of claim was not indorsed on or served with the writ, the plaintiff must serve the statement of claim on the defendant; and

(b) the plaintiff must produce a certificate issued by the proper officer on the day of the hearing stating that no appearance has been entered by the defendant against whom it is sought to enter judgment.

(3) On a judgment under this rule, the plaintiff may issue execution on the judgment, except as provided in subrule (4).

(4) If there is more than one defendant, judgment entered under this rule cannot be enforced against any defendant without leave of the Court.

[Rule 9 inserted: Gazette 16 Nov 2016 p. 5197.]

10. Entry of judgment for costs only upon writs for other claims

(1) This rule applies if —

(a) the writ is indorsed with a claim to which none of rules 2 to 6 apply; but

(b) it has become unnecessary for the plaintiff to proceed with the action —

(i) because the defendant has satisfied the claim or complied with the demands of the claim; or

(ii) for any other similar reason.

(2) If this rule applies, then, if the defendant fails to enter an appearance within the time limited for appearing, the plaintiff may, with the leave of the Court, enter judgment against the defendant for costs.

(3) The application for the leave must be by summons.

(4) Unless the Court orders otherwise, and regardless of Order 72 rule 8, the summons must be served on the defendant against whom it is sought to enter judgment.

[Rule 10 inserted: Gazette 16 Nov 2016 p. 5198.]

11. Reference to Court in case of doubt or difficulty

In any case in which the plaintiff claims to be entitled under this Order to enter judgment in default of the defendant's appearance, the Court may, if any doubt or difficulty arises in relation to that claim, direct that it be brought before the Court on motion or by summons.

[Rule 11 inserted: Gazette 16 Nov 2016 p. 5198.]

12. Default judgment to inform defendant of certain matters

A default judgment must contain a statement informing the defendant of the defendant's right —

(a) to apply to have the default judgment set aside or varied; and

(b) if applicable, to apply under the *Civil Judgments Enforcement Act 2004* section 15 for an order suspending the enforcement of all or part of the default judgment.

[Rule 12 inserted: Gazette 16 Nov 2016 p. 5198-9.]

13. Service of default judgment

(1) A plaintiff who obtains a default judgment must serve the judgment on the defendant as soon as practicable after the judgment is entered.

(2) The defendant must be served personally with the default judgment.

[Rule 13 inserted: Gazette 16 Nov 2016 p. 5199.]

14. Setting aside or varying default judgment

The Court may, on whatever terms it thinks just, set aside or vary any default judgment entered under this Order.

[Rule 14 inserted: Gazette 16 Nov 2016 p. 5199.]

Order 14 — Summary judgment

1. When plaintiff may apply for summary judgment

(1) Where in an action to which this Order applies a statement of claim has been served on a defendant and that defendant has entered an appearance, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such claim, or has no defence to such a claim or part except as to the amount of any damages claimed, within 21 days after appearance or at any later time by leave of the Court, apply to the Court for judgment against that defendant.

(2) This Order applies to every action begun by writ other than a probate or admiralty action.

[Rule 1 amended: Gazette 5 Jun 1992 p. 2279; 28 Oct 1996 p. 5675.]

2. Application under r. 1, how to make

(1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the claim or the part of the claim to which the application relates is based, and stating that in the deponent's belief there is no defence to that claim or part thereof, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons and a copy of the affidavit in support and of any exhibits therein referred to shall be served on the defendant not less than 7 days before the return day of the summons.

[Rule 2 amended: Gazette 3 Oct 1975 p. 3769.]

3. Judgment may be given for plaintiff

(1) On the hearing of an application under rule 1 unless the Court dismisses the application, or the defendant satisfies the Court with respect to the claim, or the part of the claim, to which the application relates that there is an issue or question in dispute which ought to be tried, or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against the defendant on that claim or part thereof as may be just, having regard to the nature of the remedy or relief claimed.

(2) The Court may, by order and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

4. Defendant may be given leave to defend

(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) Rule 2(2) applies mutatis mutandis for the purposes of this rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim to which the application relates, either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary, or other similar officer thereof, or any person purporting to act in such capacity —

(a) to produce any document; or

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

*[**5.** Deleted: Gazette 28 Oct 1996 p. 5675.]*

6. Summary judgment on counterclaim

(1) Where a defendant in an action begun by writ has served a counterclaim on the plaintiff, then subject to subrule (3) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such claim, apply to the Court for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 apply in relation to an application under this rule as they apply in relation to an application under rule 1, but with the following modifications, that is to say —

(a) references to the plaintiff and defendant shall be construed as references to defendant and plaintiff respectively; and

(b) the words in rule 3(2) "any counterclaim made or raised by the defendant in" shall be omitted; and

(c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

[Rule 6 amended: Gazette 28 Jun 2011 p. 2552.]

7. Court's powers if leave to defend given etc.

Where the Court —

(a) gives leave (whether conditional or unconditional) to defend any action or counterclaim, as the case may be, with respect to a claim or a part of a claim; or

(b) gives judgment for a plaintiff or a defendant on a claim or a part of a claim, but also orders that execution of the

judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court may give directions as to the further conduct of the action and may direct that the affidavit filed by the defendant or the plaintiff, as the case may be, under this Order, shall serve in lieu of defence and may order the action to be forthwith set down for trial, and may define the issues that are to be tried.

[Rule 7 amended: Gazette 16 Aug 2017 p. 4410.]

8. Costs

(1) If the plaintiff makes an application under rule 1 and the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the Court may dismiss the application with costs, and may require the costs to be paid by the plaintiff forthwith.

(2) The Court shall have the same power to dismiss an application under rule 6 as it has under subrule (1) to dismiss an application under rule 1, and that subrule shall apply accordingly with the necessary modifications.

[Rule 8 amended: Gazette 15 Jun 1973 p. 2248; 28 Jun 2011 p. 2552.]

9. Right to proceed with residue of action or counterclaim

(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim, or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 6 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as

respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

10. Judgment for delivery of specific chattel

Where the claim to which an application under rule 1 or rule 6 relates is for the delivery up of a specific chattel, and the Court gives judgment under this Order for the applicant, the Court shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

11. Relief from judgment for recovery of land

A tenant shall have the same right to relief after a judgment under this Order for the recovery of land on the ground of forfeiture as if the judgment had been given after trial.

12. Summary judgment against absent party may be set aside or varied

Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 6 may be set aside or varied by the Court on such terms as it thinks just.

[Order 15 deleted: Gazette 28 Oct 1996 p. 5675.]

Order 16 — Summary judgment on application of defendant

1. Application by defendant for summary judgment

(1) Any defendant to an action may within 21 days after appearance or at any later time by leave of the Court, apply to the Court for summary judgment, and the Court, if satisfied that the action is frivolous or vexatious, that the defendant has a good defence on the merits, or that the action should be disposed of summarily or without pleadings, may order —

(a) that judgment be entered for the defendant with or without costs; or

(b) that the plaintiff shall proceed to trial without pleadings,

or if all parties consent, may dispose of the action finally and without appeal in a summary manner.

(2) An application under subrule (1) shall be made by summons supported by affidavit verifying the facts upon which the application is based.

(3) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(4) The summons and a copy of the affidavit in support and its annexures, if any, shall be served on the plaintiff not less than 7 days before the return day of the summons.

[Rule 1 amended: Gazette 14 Dec 1979 p. 3869; 5 Jun 1992 p. 2279-80; 28 Jun 2011 p. 2552.]

2. Plaintiff may show cause

(1) The plaintiff may show cause against such application by affidavit.

(1a) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(2) The Court may if it thinks fit, order the plaintiff or the defendant or in the case of a corporation any officer thereof to attend and be examined and cross-examined upon oath or to produce any papers, books, or documents, or copies of, or extracts therefrom.

[Rule 2 amended: Gazette 14 Dec 1979 p. 3869; 5 Jun 1992 p. 2280; 28 Jul 2010 p. 3482.]

3. Court's powers if action to go to trial

If the Court directs that the action shall proceed to trial, it may give directions as to the further conduct of the action and may order that the action be forthwith set down for trial.

[Rule 3 amended: Gazette 14 Dec 1979 p. 3869; 16 Aug 2017 p. 4410.]

4. Summary judgment against absent party may be set aside or varied

Any judgment given against a party who does not appear at the hearing of the application under rule 1 may be set aside or varied by the Court on such terms as it thinks just.

[Rule 4 inserted: Gazette 5 Jun 1992 p. 2280.]

Order 17 — Interpleader

1. When interpleader relief may be granted

Relief by way of interpleader may be granted by the Court —

(a) where the person seeking relief (called the applicant) is under liability —

(i) to yield up or give possession of any land; or

(ii) to perform a contract; or

(iii) for any debt or money; or

(iv) to yield up goods or chattels or any document, muniment of title, or security,

in respect of which he is or expects to be sued by 2 or more parties (called the claimants) making adverse claims.

[(b) deleted]

[Rule 1 amended: Gazette 21 Feb 2007 p. 536.]

2. How to apply for interpleader relief

(1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.

(2) No appearance need be entered to an originating summons under this rule.

(3) A summons under this rule must be supported by evidence that the applicant —

(a) claims no interest in the subject-matter in dispute other than for charges and costs; and

(b) does not collude with any of the claimants to that subject-matter; and

(c) is willing to dispose of any property involved in such manner as the Court or a judge may direct.

[Rule 2 amended: Gazette 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552; 24 May 2017 p. 2607.]

3. Time for application by defendant

Where the applicant is a defendant, application for relief may be made at any time after the service of the writ.

4. Stay of proceedings

If the application is made by a defendant the Court may stay all further proceedings.

5. Court's powers on application

If the claimants appear in pursuance of the summons the Court or a judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may give directions as to which of the claimants is to be plaintiff and which defendant, and as to the method of trial and such other directions as may be necessary in the circumstances.

6. Summary determination

The Court may, with the consent of both claimants or on the request of any claimant dispose of the merits of the claims and decide the same in a summary manner.

[Rule 6 amended: Gazette 21 Feb 2007 p. 536.]

7. Where question of law only

Where the question is one of law, and the facts are not in dispute, the Court may either decide the question without directing the trial of an issue, or order that a special case be

stated for the opinion of the Court. If a special case is stated Order 31 shall, as far as applicable, apply.

8. Claimant failing to appear etc.

If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court may make an order declaring him and all persons claiming under him barred against the applicant and persons claiming under him.

9. Power to order sale of goods

Whenever it appears desirable from the nature of the subject matter or the parties agree, the Court or a judge may order the sale of the whole or any part thereof and direct the application of the proceeds according to the rights of the parties as determined on the interpleader proceedings.

10. Discovery etc. and trial

The rules relating to discovery, interrogatories and inspection, and the trial of actions shall apply to interpleader issues with the necessary modifications.

11. One order where several causes pending

Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters, such order may be made by the Court before whom the proceedings may be taken, and shall be entitled in such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

*[**12-14.** Deleted: Gazette 21 Feb 2007 p. 536.]*

15. Orders as to costs etc.

Subject to rules 1 to 11, the Court may in and for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

[Rule 15 amended: Gazette 28 Jun 2011 p. 2553.]

Order 18 — Causes of action, counterclaims and parties

1. Joinder of causes of action

(1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action —

(a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action; or

(b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others; or

(c) with the leave of the Court.

(2) An application for leave under this rule must be made *ex parte* by affidavit before the issue of the writ and the affidavit must state the grounds of the application.

2. Counterclaim against plaintiff

(1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

3. Counterclaim against additional parties

(1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action then, subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this subrule shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by subrule (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which by virtue of Order 20 rule 4, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) Where by virtue of subrule (2) a copy of a counterclaim is required to be served on a person who is not already a party to

the action, the following provisions of these rules, namely, Order 9 except rule 1(4), Order 10, Order 12 and Order 13 shall, subject to subrule (3), apply in relation to the counterclaim and the proceedings arising from it as if —

(a) the counterclaim were a writ and the proceedings arising from it an action; and

(b) the party making the counterclaim were a plaintiff and the party against who it is made a defendant in that action.

(5) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 10, addressed to that person.

[Rule 3 amended: Gazette 22 Feb 2008 p. 635; 28 Jun 2011 p. 2552 and 2553; 12 Jun 2012 p. 2451.]

4. Joinder of parties

(1) Subject to rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where —

(a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and

(b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any Act and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this subrule, be made a defendant.

This subrule shall not apply to a probate action.

(3) Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

[Rule 4 amended: Gazette 28 Jun 2011 p. 2552.]

5. Court may order separate trials etc.

(1) If claims in respect of 2 or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if 2 or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

6. Misjoinder and nonjoinder of parties

(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —

(a) order that any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) order that any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, be added as a party,

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(3) An application by any person for an order under subrule (2) adding him as a defendant must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter.

[Rule 6 amended: Gazette 28 Jun 2011 p. 2552.]

7. Change of parties by reason of death etc.

(1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first-mentioned party.

An application for an order under this subrule may be made

ex parte.

(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but —

(a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side; and

(b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be noted in the Cause Book and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.

(5) Any application to the Court by a person served with an order made *ex parte* under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

[Rule 7 amended: Gazette 28 Jun 2011 p. 2552.]

8. Order made under r. 6 or 7, consequences of

(1) Where an order is made under rule 6, the writ by which the action in question was begun must be amended accordingly and must be indorsed with —

(a) a reference to the order in pursuance of which the amendment is made; and

(b) the date on which the amendment is made,

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the Cause Book.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the Cause Book.

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until —

(a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him; or

(b) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the Cause Book,

and where by virtue of such an order a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new party.

[Rule 8 amended: Gazette 28 Jun 2011 p. 2553.]

9. Failure to proceed after death of party

(1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

(2) Where in any action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

10. Action for possession of land, joining non-party who is in possession

(1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made *ex parte*, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.

(3) A person added as a defendant by an order under this rule must serve a copy of the order on the plaintiff and must enter an appearance in the action within such period, if any, as may be

specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

11. Relator actions

(1) Before the name of any person is used in any action as a relator, that person must give to his solicitor a written authorisation so to use his name and the authorisation must be filed.

(2) In all relator actions the plaintiff shall file with the writ or other originating process, the consent of the Attorney General to the action being brought.

12. Representation of persons with same interest in proceedings

(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13 or Order 18A, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued, to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this subrule, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under subrule (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, the person may dispute liability to have the judgment or order enforced against them on the ground that by reason of facts and matters particular to their case the person is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under subrule (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

(7) A person cannot begin or carry on a proceeding under this rule except by a legal practitioner.

[Rule 12 amended: Gazette 28 Jun 2011 p. 2552; SL 2023/16 r. 7.]

13. Representation of interested persons who cannot be ascertained etc.

(1) In any proceedings concerning —

(a) the administration of the estate of a deceased person; or

(b) property subject to a trust; or

(c) the construction of a written instrument, including a statute or a regulation, rule or by-law made under a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in subrule (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be

interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by subrule (1) are as follows —

(a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;

(b) that the person, class or some member of the class, though ascertained, cannot be found;

(c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which subrule (1) applies, the Court exercises the power conferred by that subrule, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but —

(a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise; or

(b) the absent persons are represented by a person appointed under subrule (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound

accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

[Rule 13 amended: Gazette 28 Jun 2011 p. 2552.]

14. Representation of beneficiaries by trustees etc.

(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Subrule (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

[Rule 14 amended: Gazette 28 Jun 2011 p. 2552.]

15. Representation of deceased person interested in proceedings

(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

16. Declaratory judgment

No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

17. Conduct of proceedings

The Court may give the conduct of any action, inquiry or other proceeding to such person as it thinks fit.

Order 18A — Representative proceedings under the *Civil Procedure (Representative Proceedings) Act 2022*

[Heading inserted: SL 2023/16 r. 8.]

1. Terms used

In this Order each of the following terms has the meaning given in the *Civil Procedure (Representative Proceedings) Act 2022* section 3 —

group member

representative party

representative proceeding

[Rule 1 inserted: SL 2023/16 r. 8.]

2. Person must act by legal practitioner

A person cannot commence or carry on a representative proceeding except by a legal practitioner.

[Rule 2 inserted: SL 2023/16 r. 8.]

3. Representative Proceedings List; headings to documents

(1) This rule applies if the Court administratively establishes a list (the ***Representative Proceedings List***) of proceedings for the purposes of this Order.

(2) All representative proceedings are on the Representative Proceedings List.

(3) The heading of every document filed or issued in a representative proceeding must include "Representative Proceedings List" under "In the Supreme Court of Western Australia".

[Rule 3 inserted: SL 2023/16 r. 8.]

4. Form of consent to be group member

A person referred to in the *Civil Procedure (Representative Proceedings) Act 2022* section 8(2) may give consent to be a group member in a representative proceeding by —

(a) filing a Form 10A; and

(b) serving a copy on the representative party for the proceeding.

[Rule 4 inserted: SL 2023/16 r. 8.]

5. Form of opt-out notice

For the purposes of the *Civil Procedure (Representative Proceedings) Act 2022* section 12(2), a group member may opt out of a representative proceeding by filing a Form 10B.

[Rule 5 inserted: SL 2023/16 r. 8.]

Order 19 — Third party and similar proceedings

1. Third party notice

(1) Where in any action a defendant who has entered an appearance claims against any person not already a party to the action (in this Order called the third party) —

(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) that any question or issue relating to or connected with the original subject-matter of the action is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between either or both of them and the third party,

then, subject to subrule (2), the defendant may issue a notice in Form No. 11 or 12, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

[Rule 1 amended: Gazette 28 Jun 2011 p. 2552.]

2. Application for leave to issue third party notice

(1) An application for leave to issue a third party notice may be made *ex parte* but the Court may direct a summons for leave to be issued.

(2) An application for leave to issue a third party notice must be supported by an affidavit stating —

(a) the nature of the claim made by the plaintiff in the action; and

(b) the stage which proceedings in the action have reached; and

(c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and

(d) the name and address of the person against whom the third party notice is to be issued.

3. Issue and service of, and entry of appearance to, third party notice

(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ by which the action was begun and of the pleadings (if any) served in the action.

(3) Subject to subrules (1) and (2), the following provisions of these rules, namely, Order 5 rules 7, 8 and 11, Order 9 except rule 1(4), Order 10 and Order 12, shall apply in relation to a third party notice and to the proceedings begun thereby as if —

(a) the third party notice were a writ and the proceedings begun thereby an action; and

(b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

[Rule 3 amended: Gazette 7 Oct 1977 p. 3602; 28 Jun 2011 p. 2553; 12 Jun 2012 p. 2451.]

4. Third party directions

(1) If the third party enters an appearance, the defendant who issued the third party notice must, within 10 days of the appearance of the third party, by summons to be served on all the other parties to the action, apply to the Court for directions.

(2) If a summons is not served on the third party under subrule (1), the third party may, not earlier than 7 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court may —

(a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or

(b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or

(c) dismiss the application and terminate the proceedings on the third party notice,

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to

appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) The Court may at any time vary or rescind any order made or direction given under this rule.

[Rule 4 amended: Gazette 26 Aug 1994 p. 4410; 28 Jun 2011 p. 2552.]

5. Default of third party etc.

(1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so —

(a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and

(b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under subrule (1)(b) or subrule (2) on such terms (if any) as it thinks just.

[Rule 5 amended: Gazette 28 Jun 2011 p. 2552.]

6. Setting aside third party proceedings

Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

7. Judgment between defendant and third party

(1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons or motion, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

(2) Where in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not issue against the third party except as to costs, without the leave of the Court until the judgment against the defendant has been satisfied at least to the extent of the third party liability which he claims to enforce under the judgment.

8. Claims and issues between defendant and another party

(1) Where in any action a defendant who has entered an appearance —

(a) claims against a person who is already a party to the action any contribution or indemnity; or

(b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) requires that any question or issue relating to or connected with the original subject-matter of the action

should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action,

then, subject to subrule (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined.

(2) Where a defendant makes such a claim as is mentioned in subrule (1) and that claim could be made by him by counterclaim in the action, subrule (1) shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words "7 days after entering an appearance" there were substituted the words "14 days after service of the notice on him".

[Rule 8 amended: Gazette 28 Jun 2011 p. 2552.]

9. Claims by third and subsequent parties

(1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this Order shall, with the modification mentioned in subrule (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where

any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

(2) The modification referred to in subrule (1) is that subrule (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).

(3) A third party may not issue a notice under rule 1 without the leave of the Court unless he issues the notice before the expiration of 14 days after the time limited for appearing to the notice issued against him.

[Rule 9 amended: Gazette 28 Jun 2011 p. 2552.]

10. Offer of contribution

If, before the trial of an action, a party to the action who, either as a third party or as one of 2 or more tortfeasors liable in respect of the same damage, stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the judge at the trial, the offer shall not be brought to the attention of the judge until after all questions of liability and amount of debt or damages have been decided.

11. Counterclaim by defendant

Where in any action a counterclaim is made by a defendant, rules 1 to 10 shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

[Rule 11 amended: Gazette 28 Jun 2011 p. 2553.]

12. Costs

The Court may decide all questions of costs as between a third party and other parties to the action, and may order any one or more of them to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require.

Order 20 — Pleadings

1. Statement of claim, service of

Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are 2 or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant enters an appearance.

[Rule 1 amended: Gazette 12 Jun 2012 p. 2451.]

2. Statement of claim, content of

(1) A statement of claim must state specifically the relief or remedy which the plaintiff claims, but costs need not be specifically claimed.

(2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned.

(3) Subject to subrule (2) a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.

(4) Except when indorsed on the writ every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2552.]

3. Pleadings etc. to be filed before service

(1) Subject to subrule (2) the original of every statement of claim, defence, set off, or counterclaim, and of every reply or subsequent pleading, and of any further particulars of any

pleading, a copy of which is required by these rules to be served on one party by another, must be filed before the copy is served, and the copy must be served within one working day after the date of filing the original.

(2) This rule does not apply where the statement of claim is indorsed on the writ.

[Rule 3 amended: Gazette 28 Jul 2010 p. 3462; 28 Jun 2011 p. 2552.]

4. Defence, service of

(1) Subject to subrule (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14 rule 1 is served on a defendant before he serves his defence, subrule (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 14 days after the making of the order or within such other period as may be specified therein.

[Rule 4 amended: Gazette 28 Jun 2011 p. 2552.]

5. Reply and defence to counterclaim, service of

(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 9, and if no reply is served, rule 15(1) will apply.

(2) A plaintiff on whom the defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 14 days after the service on him of the counterclaim to which it relates.

6. Pleadings subsequent to reply etc., leave required for

No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

7. Pleadings, formal requirements of

(1) Every pleading in an action must bear on its face —

(a) the year in which the writ in the action was issued and the number of the action; and

(b) the title of the action; and

(c) the description of the pleading; and

(d) the date on which it was filed.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading of a party must be indorsed —

(a) where the party sues or defends in person, with his name and address for service;

(b) in any other case, with the name or firm and address for service of the solicitor by whom it was filed.

(5) Every pleading of a party must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

(5A) It shall be a sufficient compliance with subrule (5) if the pleading is signed by a solicitor who —

(a) is employed by the party's solicitor; and

(b) has settled the pleading; and

(c) is authorised to sign the pleading on his principal's behalf; and

(d) adds his own signature after the name of his firm.

(6) The date of service of a pleading must be stated on every copy which is served.

[Rule 7 amended: Gazette 15 Jun 1973 p. 2248; 28 Jun 2011 p. 2552; 27 Feb 2018 p. 558.]

8. Facts, not evidence, to be pleaded

(1) Subject to the provisions of this rule, and rules 11, 12 and 13 every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

(2) Without prejudice to subrule (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of

which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

[Rule 8 amended: Gazette 28 Jun 2011 p. 2552.]

9. Matters which must be specifically pleaded

(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality —

(a) which he alleges makes any claim or defence of the opposite party not maintainable; or

(b) which, if not specifically pleaded, might take the opposite party by surprise; or

(c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to subrule (1), a defendant to an action for possession of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages or a claim for aggravated damages must be specifically pleaded together with the facts on which the party pleading relies.

(4) Where the plaintiff intends to claim interest, he must claim it specifically; and the statement of claim must —

(a) identify that part of the claim or the components of the damages to which the claim for interest relates;

(b) where the claim for interest is founded on a contract, contain a statement in summary form of the material facts relied on;

(c) where the claim for interest is pursuant to a statute —

(i) identify the statutory provision; and

(ii) specify the rate claimed; and

(iii) state the date or dates from which interest is claimed.

[Rule 9 amended: Gazette 3 Oct 1975 p. 3769; 31 Mar 1983 p. 1090; 28 Jun 2011 p. 2552.]

10. Matter may be pleaded whenever arising

Subject to rules 8(1) and 11, a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

11. Party's pleadings to be consistent

(1) A party shall not in any pleading make any allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his.

(2) Subrule (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

[Rule 11 amended: Gazette 28 Jun 2011 p. 2552.]

12. Points of law may be pleaded

A party may by his pleading raise any point of law.

13. Particulars of claims etc.

(1) Subject to subrule (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words —

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of

mind except knowledge, particulars of the facts on which the party relies.

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of subrule (3), the Court may, on such terms as it thinks just, order that party to serve on any other party —

(a) where he alleges knowledge, particulars of the facts on which he relies; and

(b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) An order under this rule shall not be made unless a written request for the particulars required by the applicant has been filed and served within 30 days of the service of the pleadings or such other time as the Court may allow.

(7) The party at whose instance particulars have been served under an order of the Court shall, unless the order otherwise provides, have the same length of time for pleading after the service of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the

order otherwise provides, operate as a stay of proceedings, or give any extension of time.

[Rule 13 amended: Gazette 26 Aug 1994 p. 4410; 28 Jun 2011 p. 2552.]

13A. Particulars in defamation actions

(1) Where in an action for defamation the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of that sense.

(2) Where in an action for defamation the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for defamation the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice; but where the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule applies in relation to a counterclaim for defamation as if the party making the counterclaim were the plaintiff and the party against whom it is made were the defendant.

[Rule 13A inserted: Gazette 23 Sep 1983 p. 3797; amended: Gazette 16 Aug 2017 p. 4411.]

14. Admissions, traverses etc.

(1) Subject to subrule (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 15 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission.

(3) Subject to subrule (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

[Rule 14 amended: Gazette 28 Jun 2011 p. 2552.]

15. Denial by joinder of issue

(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to subrule (3) —

(a) there is at the close of pleadings an implied joinder of issue on the pleading last served; and

(b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an

implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

[Rule 15 amended: Gazette 28 Jun 2011 p. 2552.]

16. Defence of tender not available without payment into court

Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 24 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

17. Defence of set-off

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

18. Counterclaim and defence to counterclaim

Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically —

(a) rule 2(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;

(b) rules 9(2), 16, and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

19. Striking out pleadings etc.

(1) The Court may at any stage of the proceedings, subject to subrule (3), order to be struck out or amended any pleading, or the indorsement of any writ in the action, or anything in any pleading or in the indorsement on the ground that —

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under subrule (1)(a).

(3) An application for an order under subrule (1) must —

(a) be made within 21 days of the service of any pleading, or amended pleading, or writ to which the application refers; and

(b) where the application is to strike out certain pleadings, specify —

(i) the paragraph of subrule (1) under which the application is made; and

(ii) those parts of the pleadings which the applicant seeks to have struck out;

and

(c) where the application is to strike out the entire pleading, clearly indicate that intention in the application.

[(4) deleted]

(5) Unless special circumstances are shown, an application to amend pleadings consequent upon an order striking the pleadings out, in whole or in part, shall be accompanied by a minute of the proposed amendment.

[Rule 19 amended: Gazette 26 Aug 1994 p. 4410-11; 24 Jan 1995 p. 270; 9 Aug 1996 p. 3949; 28 Jun 2011 p. 2552 and 2553; 24 May 2017 p. 2607.]

20. Close of pleadings

(1) Subject to subrule (2) the pleadings in an action are deemed to be closed —

(a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or

(b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

(2) Where the time for the service of a reply or defence to counterclaim or both is extended either by order of the Court or by written consent of the parties, or by the operation of rule 13(7), the pleadings are deemed to be closed at the expiration of 14 days after such extended time has expired.

[Rule 20 amended: Gazette 28 Jun 2011 p. 2552.]

21. Trial without pleadings

(1) Where in an action to which this rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings

or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree to such a statement, may settle the statement itself.

(3) If the Court makes an order under subrule (2), it must, and if it dismisses an application for such an order, it may, make such case management directions under Order 4A as to the further conduct of the action as it considers just.

(4) This rule applies to every action begun by writ other than one which includes —

(a) a claim by the plaintiff for defamation, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(b) a claim by the plaintiff based on an allegation of fraud.

[Rule 21 amended: Gazette 28 Jul 2010 p. 3466; 16 Aug 2017 p. 4411.]

22. Preparation of issues

Where in any cause or matter it appears to the Court that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court.

23. Collision between vessels, content etc. of Preliminary Act

(1) In an action for damage by collision between vessels, unless the Court otherwise orders, the plaintiff or his solicitor must, within 7 days after the commencement of the action, and the defendant or his solicitor must, within 7 days after appearance and before any pleading is delivered, respectively file a document to be called a Preliminary Act.

(2) Every Preliminary Act shall be sealed up and, unless the Court otherwise orders, shall not be opened until the pleadings are

closed and a consent signed by the respective parties or their solicitors that the Preliminary Acts shall be opened is filed.

(3) The Preliminary Act shall contain a statement of the following particulars —

(a) the names of the vessels which came into collision, the names of their masters, and their ports of registry;

(b) the date and time of the collision;

(c) the place of the collision;

(d) the direction and force of the wind;

(e) the state of the weather;

(f) the state, direction and force of the tidal or other current;

(g) the course and speed of the vessel when the other was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;

(h) the lights (if any) carried by the vessel;

(i) the distance and bearing of the other vessel if and when her echo was first observed by radar;

(j) the distance, bearing and approximate heading of the other vessel when first seen;

(k) what light or combination of lights (if any) of the other vessel was first seen;

(l) what other lights or combination of lights (if any) of the other vessel were subsequently seen before the collision, and when;

(m) what alterations (if any) were made to the course and speed of the vessel after the earlier of the 2 times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;

(n) the parts of each vessel which first came into contact and the approximate angle between the 2 vessels at the moment of contact;

(o) what sound signals (if any) were given, and when;

(p) what sound signals (if any) were heard from the other vessel, and when.

(4) Where the Court orders the Preliminary Acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the Preliminary Acts.

(5) Rule 1 shall not apply to an action in which Preliminary Acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the Preliminary Act of any party to the action is filed.

[Rule 23 amended: Gazette 28 Jun 2011 p. 2553-4; 27 Feb 2018 p. 558-9.]

24. Failure to file Preliminary Act

(1) Where in an action to which rule 23 applies, the plaintiff fails to file a Preliminary Act within the time prescribed for that purpose by that rule or by any order of the Court, any defendant who has filed such an Act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to file a Preliminary Act within the period prescribed for that purpose by rule 23 or by any order of the Court, Order 22 rules 2 and 3 shall apply as if the defendant's failure to file the Preliminary Act within that period were a

failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff may enter judgment against the defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

[Rule 24 amended: Gazette 27 Feb 2018 p. 559.]

Order 21 — Amendment

1. Amending writ without leave

(1) Subject to subrule (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed by filing its amended writ before the closure.

[(2) deleted]

(3) This rule shall not apply in relation to an amendment which consists of —

(a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued; or

(b) the addition or substitution of a new cause of action; or

(c) without prejudice to rule 3, an amendment of the statement of claim, if any, indorsed on the writ.

[Rule 1 amended: Gazette 28 Jul 2010 p. 3462; 28 Jun 2011 p. 2552.]

2. Amending memorandum of appearance

A defendant may not amend his memorandum of appearance without the leave of the Court.

3. Amending pleadings without leave

(1) A party may amend any of its pleadings, without the leave of the Court, by filing its amended pleading not later than 7 weeks before the date fixed for the start of the trial of the case.

(2) A party served with a pleading amended under subrule (1) may make any amendment needed to any of its pleadings as a consequence of the amended pleading, without the leave of the Court, by filing its amended pleading within 10 working days after the date on which it is served with the amended pleading.

(3) A party served with a pleading amended under subrule (1) or (2) may apply to the case manager for any amendment in the pleading to be struck out.

(4) A party's application under subrule (3) must be made within 7 working days after the date on which the party is served with the amended pleading.

(5) If, on an application made under subrule (3), the case manager is satisfied that, had an application for leave to make the amendment in question been made under rule 5 at the date when the amended pleading was filed under this rule, leave to make the amendment or part of the amendment would have been refused, the manager must order the amendment or that part of it to be struck out.

(6) An order made on an application under this rule may be made on such terms as to costs as the case manager considers just.

[Rule 3 inserted: Gazette 28 Jul 2010 p. 3462-3.]

*[**4.** Deleted: Gazette 28 Jul 2010 p. 3462.]*

5. Amending writ or pleading with leave

(1) This rule is subject to —

(a) Order 18 rules 6, 7 and 8; and

(b) Order 20 rule 19(2) to (5).

(2) The Court may at any stage of the proceedings, without determining whether any relevant period of limitation has expired, allow the plaintiff to amend the plaintiff's writ, or any party to amend that party's pleading, on any terms as to costs or otherwise that may be just and in the manner (if any) that the Court may direct.

[Rule 5 inserted: Gazette 27 Feb 2018 p. 559-60.]

6. Amending other originating process

Rule 5 shall have effect in relation to an originating summons, and an originating motion as it has effect in relation to a writ.

7. Amending other documents

(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) This rule shall not have effect in relation to a judgment or order.

8. Failure to amend after order

Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not file the document, amended in accordance with the order, before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

[Rule 8 amended: Gazette 28 Jul 2010 p. 3463.]

9. How amendments to be made

(1) Where the amendments authorised under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised and showing its original contents with the amendments written in any manner that will distinguish the alterations from the original document or from any previous

amendment, must be prepared, and in the case of a writ or originating summons re-issued.

(2) Except as provided in subrule (1), and subject to any direction given under rule 5 or 7, the amendments so authorised shall be effected by writing the necessary alterations on the writ, pleading or other document in any manner that will distinguish the alterations from the original document or from any previous amendment, and in the case of a writ or originating summons, by filing a copy and the request that it be re-sealed.

(3) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the judge or master by whom the order (if any) authorising the amendment was made, and the date thereof, or if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

[Rule 9 amended: Gazette 24 Jan 1995 p. 272; 28 Jul 2010 p. 3463; 28 Jun 2011 p. 2552; 27 Feb 2018 p. 560.]

10. Clerical errors etc., correcting (slip rule)

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.

11. Service of amended documents

An amended writ, pleading or other document that is filed under this Order must be served on each other party within one working day after it is filed unless the Court orders otherwise.

[Rule 11 inserted: Gazette 28 Jul 2010 p. 3463-4.]

[Order 22 (r. 1-10) deleted: Gazette 16 Nov 2016 p. 5199.]

Order 23 — Discontinuance

1. Withdrawing appearance

A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.

2. Plaintiff may discontinue; defence etc. may be withdrawn

(1) The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other step in the action, by notice in writing, wholly discontinue his action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn.

(2) The costs referred to in subrule (1) shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.

(3) Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court, but the Court may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out.

(4) The Court may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence or counterclaim, or any part thereof, without such leave.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2552.]

3. Costs

Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within 4 days after taxation.

4. Subsequent action stayed pending payment

If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court may, if it thinks fit, order a stay of such subsequent action, until such costs shall have been paid.

5. Withdrawal of summons

A party who has taken out a summons in a cause or matter may not withdraw it except by leave of the Court.

Order 24 — Payment into court — offers to consent to judgment

*[**1-8.** Deleted: Gazette 5 Apr 1991 p. 1398.]*

9. In certain cases no payment out without order

(1) Subject to subrule (2) money paid into court under an order of the Court, or certificate of a master or a registrar, shall not be paid out of court except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14 —

(a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the statement of claim or counterclaim, as the case may be, and specified in the notice; or

(b) if he makes a plea of tender, may by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered; and money appropriated in accordance with this rule shall be deemed to be money paid into court under rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

[Rule 9 amended: Gazette 14 Dec 1979 p. 3869; 30 Nov 1984 p. 3951; 28 Jun 2011 p. 2552.]

*[**10.** Deleted: Gazette 5 Apr 1991 p. 1398.]*

11. Intestate's estate, Court may direct some payments without administration

Where the estate of a deceased person who has died intestate is entitled to a fund or to a share of a fund in court, not exceeding $7 500 and it is proved to the satisfaction of the Court —

(a) that no administration to such deceased person's estate has been taken out; and

(b) that his assets do not exceed the value of $7 500 including the amount of the fund or share to which the estate of such deceased person is entitled,

the Court may direct that such fund or share of a fund shall be paid, transferred or delivered to the person, who being the widower, widow, de facto partner of the deceased (immediately before the death), child, parent, brother or sister of the deceased would be entitled to take out administration.

[Rule 11 amended: Gazette 30 Nov 1984 p. 3953; 30 Jun 2003 p. 2631.]

12. Regulations (Sch. 3)

The manner of payment into and out of court and the manner in which money in court shall be dealt with shall be subject to the regulations contained in Schedule 3.

[Rule 12 amended: Gazette 28 Jun 2011 p. 2554.]

Order 24A — Offer of compromise

[Heading inserted: Gazette 5 Apr 1991 p. 1398.]

1. Parties entitled to make offer

In any proceedings the plaintiff or the defendant may make to the other an offer to compromise any claim in the proceedings on the terms specified in the notice of offer.

[Rule 1 inserted: Gazette 4 Sep 2015 p. 3696.]

2. Application of this Order to counterclaims and third party notices

Where a party makes a claim by way of counterclaim or third party notice, this Order applies in relation to the proceeding on that claim as if —

(a) the party making the claim were the plaintiff; and

(b) the party against whom the claim is made were the defendant.

[Rule 2 inserted: Gazette 4 Sep 2015 p. 3696.]

3A. How to make offer

(1) An offer of compromise is made to a party under this Order by serving a notice of the offer on the party.

(2) A notice of offer is to —

(a) be in writing; and

(b) bear a statement to the effect that the offer is made under this Order.

[Rule 3A inserted: Gazette 4 Sep 2015 p. 3696-7.]

3. Time etc. for making, accepting etc. offer

(1) An offer may be made at any time before the time prescribed by subrule (8) in respect of the claim to which it relates.

(2) A party may make more than one offer.

(3) An offer may be expressed to be limited as to the time it is open to be accepted but the time expressed shall not be less than 28 days after it is made.

(4) An offeree shall, within 3 days after service, serve a written acknowledgment of receipt on the offeror.

(5) An offeree may accept the offer by serving notice of acceptance in writing on the offeror before —

(a) the expiration of the time specified in accordance with subrule (3) or, if no time is specified, the expiration of 28 days after the offer is made; or

(b) the time prescribed by subrule (8) in respect of the claim to which the offer relates,

whichever is sooner.

(6) An offer shall not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.

(7) An offer is open to be accepted within the period referred to in subrule (5) notwithstanding that during that period the party to whom the offer (the ***first offer***) is made makes an offer (the ***second offer***) to the party who made the first offer whether or not the second offer is made in accordance with this Order.

(8) The time prescribed for the purposes of subrules (1) and (5) is —

(a) where the trial is before a jury — after the judge begins to sum up to the jury; or

(b) in any other case — after the judge or master gives his decision or begins to give his reasons for decision on a judgment (except an interlocutory judgment).

(9) Where an offer is accepted under this rule, any party to the compromise may apply to the Court for such judgment or order as he may be entitled to and on the hearing of the application the

Court shall give such judgment or make such order as it thinks fit.

[Rule 3 inserted: Gazette 5 Apr 1991 p. 1399; amended: Gazette 28 Feb 1992 p. 995; 30 Oct 1992 p. 5310; 28 Jun 2011 p. 2552-3.]

4. Time for payment of sum offered

An offer to pay a sum of money to a plaintiff shall, unless the notice of offer otherwise provides, be taken to be an offer to pay that sum within 28 days after acceptance of the offer.

[Rule 4 inserted: Gazette 5 Apr 1991 p. 1399.]

5. Withdrawing acceptance of offer

(1) A party who accepts an offer may, by serving a notice of withdrawal on the offeror, withdraw the acceptance —

(a) where the offer provides for payment of a sum of money and the sum is not paid into Court within 28 days after acceptance of the offer; or

(b) where the Court gives leave so to do.

(2) On withdrawal of an acceptance all steps in the proceedings taken in consequence of the acceptance shall have such effect only as the Court may direct.

(3) On withdrawal of an acceptance or on the motion for leave to withdraw an acceptance, the Court may —

(a) give directions under subrule (2); and

(b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and

(c) give directions for the further conduct of the proceedings.

[Rule 5 inserted: Gazette 5 Apr 1991 p. 1399; amended: Gazette 28 Jun 2011 p. 2552.]

6. Offer without prejudice

An offer made in accordance with this Order shall be taken to have been made without prejudice, unless the notice of offer otherwise provides.

[Rule 6 inserted: Gazette 5 Apr 1991 p. 1399.]

7. Disclosure of offer to Court

(1) No statement of the fact that an offer has been made shall be contained in any pleading or affidavit.

(2) Where an offer has not been accepted, then, except as provided by rule 10(8), no communication with respect to the offer shall be made to the Court at the trial until after all questions of liability and the relief to be granted have been determined.

(3) This rule shall not apply where a notice of offer provides that the offer is not made without prejudice.

[Rule 7 inserted: Gazette 5 Apr 1991 p. 1399-400.]

8. Failure to comply with accepted offer

(1) Where a party to an accepted offer fails to comply with the terms of the offer, then unless for special cause the Court otherwise orders, the other party —

(a) shall be entitled to an order —

(i) where the party in default is the plaintiff, that the proceedings be dismissed; and

(ii) where the party in default is the defendant, that the defence be struck out,

and in either case to judgment accordingly; or

(b) may apply to the Court for such judgment or order as he may be entitled to and on the hearing of the application the Court shall give such judgment or make such order as it thinks fit.

(2) Where a party to an accepted offer fails to comply with the terms of the offer, and another party in the proceedings has made a claim which is not the subject of the accepted offer, the Court may make such order or give such judgment under subrule (1), and make such order that the proceeding on that other party's claim be continued, as it thinks fit.

[Rule 8 inserted: Gazette 5 Apr 1991 p. 1400; amended: Gazette 28 Feb 1992 p. 995; 28 Jun 2011 p. 2552; 4 Sep 2015 p. 3697.]

9. Multiple defendants

Where 2 or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a debt or damages and rights of contribution or indemnity appear to exist between the defendants, rule 8 shall not apply to an offer unless —

(a) in the case of an offer made by the plaintiff — the offer is made to all defendants, and is an offer to compromise the claim against all of them;

(b) in the case of an offer made to the plaintiff —

(i) the offer is to compromise the claim against all defendants; and

(ii) where the offer is made by 2 or more defendants — by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the plaintiff for the whole amount of the offer.

[Rule 9 inserted: Gazette 5 Apr 1991 p. 1400.]

10. Costs

(1) Upon the acceptance of an offer of compromise in accordance with rule 3(5), the plaintiff may, unless the Court otherwise orders, tax his costs in respect of the claim against the defendant up to and including the day the offer was accepted and, if the

costs are not paid within 4 days after the signing of a certificate of the taxation, enter judgment against that defendant for the taxed costs.

(2) If a notice of offer contains a term which purports to negative or limit the operation of subrule (1), that term shall be of no effect for any purpose under this Order.

(3) Subrules (4) and (5) apply to an offer which has not been accepted in the time prescribed by rule 3(5) if the Court is satisfied by the party who made the offer that the party was at all material times willing and able to comply with the terms of the offer.

(4) Where an offer is made by a plaintiff and not accepted by the defendant, and the plaintiff obtains judgment on the claim to which the offer relates no less favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for his costs in respect of the claim from the date on which the offer was made, in addition to his costs incurred before that date, all such costs to be taxed on a party and party basis, except as provided in subrule (5A).

[(4a) deleted]

(5A) If the Court is satisfied that the failure by the defendant to accept the offer made by the plaintiff was unreasonable, the plaintiff's costs from the date on which the offer was made are to be taxed on an indemnity basis, unless the interests of justice require otherwise.

(5) Where an offer is made by a defendant and not accepted by the plaintiff, and the plaintiff obtains judgment on the claim to which the offer relates not more favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for his costs in respect of the claim up to and including the day the offer was made, taxed on a party and party basis, and the

defendant shall be entitled to an order against the plaintiff for his costs in respect of the claim thereafter, taxed on a party and party basis, except as provided in subrule (7A).

(6) For the purpose of subrule (5), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the Court otherwise orders, the plaintiff shall be entitled to his costs in respect of the claim up to 11 a.m. on the day following the day on which the offer was made, taxed on a party and party basis, and the defendant shall be entitled to his costs in respect of the claim thereafter, taxed on a party and party basis, except as provided in subrule (7A).

(7A) If the Court is satisfied that the failure by the plaintiff to accept the offer made by the defendant was unreasonable, the defendant's costs are to be taxed on an indemnity basis, unless the interests of justice require otherwise.

(7) Where a plaintiff obtains judgment for the payment of a debt or damages and —

(a) the amount for which judgment is given includes interest or damages in the nature of interest; or

(b) by or under any Act the Court awards the plaintiff interest or damages in the nature of interest in respect of the amount,

then, for the purpose of determining the consequences as to costs referred to in subrules (4) and (5), the Court shall disregard so much of the interest as relates to the period after the day the offer was made.

(8) For the purpose of subrule (7), the Court may be informed of the fact that the offer was made, and of the date on which it was made, but shall not be informed of its terms.

[(9) deleted]

[Rule 10 inserted: Gazette 5 Apr 1991 p. 1400-1; amended: Gazette 28 Feb 1992 p. 996; 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552-3; 4 Sep 2015 p. 3697-8.]

Order 25 — Security for costs

1. Factors that are not grounds for ordering security for costs

The Court may order security for costs to be given by a plaintiff, but no order shall be made merely on account of the poverty of the plaintiff or the likely inability of the plaintiff to pay any costs which may be awarded against him.

2. Grounds for ordering security for costs

Without limiting the generality of rule 1 the Court may order security for costs to be furnished where the plaintiff —

(a) is ordinarily resident out of the jurisdiction, notwithstanding that he may be temporarily within the jurisdiction;

(b) is about to depart from the jurisdiction;

(c) enjoys within the jurisdiction some privilege which renders him immune, wholly or partially, from the normal processes of execution;

(d) is an undischarged bankrupt or a person who has suspended, or given notice of suspension of, his debts;

(e) is a company in liquidation or under official management, or a company in respect of which a receiver of its property has been appointed;

(f) is a relator suing for the enforcement or declaration of some public right or to have some public trust carried out or some charitable scheme settled;

(g) is in default in respect of any costs ordered to be paid by him in any proceedings previously brought by him against the same defendant or another defendant for substantially the same cause of action or in relation to substantially the same subject matter;

(h) is a person who has in the past vexatiously brought litigation against the same defendant or against any other defendant;

(i) is suing the sheriff in respect of anything done or omitted to be done by the sheriff or his officers in the execution of any judgment of the Court.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2554.]

3. Court has discretion

The granting of security shall be in the discretion of the Court, and in determining whether an order should be made the Court shall take into consideration —

(a) the prima facie merits of the claim;

(b) what property within the jurisdiction may be available to satisfy any order for costs against the plaintiff;

(c) whether the normal processes of the Court would be available within the jurisdiction for enforcement of any order for costs made against the plaintiff.

4. Term used: plaintiff

In this Order the term ***plaintiff*** shall include a defendant counterclaiming in respect of a claim not arising out of the claim made against him.

5. Manner of giving security

In fixing security the Court shall direct the form and manner in which the security is to be given and may from time to time vary the amount and form of the security.

6. Action may be stayed

Where security is ordered the action or other proceedings shall be stayed until the security is furnished, unless the Court otherwise orders.

7. Payment out

Where money has been paid into court as security for costs and the action has been finally disposed of, the amount of the security shall be paid out to the party for whose security it was furnished to the extent *pro tanto* that costs are due from the securer to such party, and the Principal Registrar shall pay out the security accordingly unless the Court has otherwise ordered, and the balance (if any) shall be refunded to the securer without the necessity for any special order.

[Rule 7 amended: Gazette 14 Dec 1979 p. 3869.]

8. Saving

This Order is without prejudice to the provisions of any Act which empowers the Court to require security to be given for the costs of any proceedings.

Order 26 — Discovery and inspection

1A. Terms used

For the purposes of this Order —

document means any record of information and includes —

(a) any disc, tape, sound-track or other device in which sounds or other means of transmitting data (not being visual images); and

(b) any film, negative, disc, tape or other device in which one or more visual images,

are embodied so as to be capable, with or without the aid of some other device, of being reproduced therefrom;

inspection, in relation to a document which is not in writing or otherwise capable of being understood by visual means alone, includes the right to require the party making discovery to supply a copy of the document in a form in which it is in writing or otherwise capable of being understood by visual means alone.

[Rule 1A inserted: Gazette 5 Jun 1992 p. 2280-1.]

1B. Documents not wholly discoverable

(1) If under this Order a party in a cause or matter is required to give discovery of a document —

(a) the party must discover the document even if it contains —

(i) information that is not related to a matter in question in the cause or matter; or

(ii) information that the party objects to producing,

as well as information relating to a matter in question in the cause or matter that the party may be required to produce; but

(b) if the party has possession, custody or power of the document, the party may edit the document to hide the information referred to in paragraph (a)(i) and (ii).

(2) If a party edits a document under subrule (1), the party must do the following —

(a) in Part 1B of its list of documents (Form No. 17) —

(i) list the document; and

(ii) identify the document as one that contains hidden information; and

(iii) state why the information is hidden; and

(iv) if the party objects to producing any of the hidden information, state the grounds for objecting;

and

(b) modify Form No. 17 for the purposes of complying with paragraph (a); and

(c) if an affidavit verifying the list of documents is required, modify Form No. 18 for the purposes of complying with paragraph (a).

(3) If a party edits a document under subrule (1), the party is not required —

(a) to produce the hidden information to another party; or

(b) to allow another party to inspect or copy the hidden information,

unless the Court orders otherwise.

[Rule 1B inserted: Gazette 28 Jul 2010 p. 3469-70.]

1. Discovery without order

(1) Any party may give notice in writing to any other party in a cause or matter requiring him to give discovery of all documents

which are or have been in his possession, custody or power relating to any matter in question therein.

(2) Where the cause or matter has been entered for trial a notice of the kind mentioned in subrule (1) shall not be given without the leave of the Court.

(3) The statements in the Form No. 17 (list of documents) filed by a party giving discovery of documents must —

(a) be verified by an affidavit of a person listed in rule 4(4); or

(b) if the party requiring discovery, in its notice given under subrule (1), so consents, be certified as correct by a person listed in rule 4(4) or the party's legal practitioner.

[Rule 1 amended: Gazette 28 Oct 1996 p. 5675; 28 Jul 2010 p. 3470; 28 Jun 2011 p. 2552; SL 2022/74 r. 15.]

2. Continuing obligation to give discovery

(1) A party that has been requested under rule 1 to give discovery shall, subject to any order made under rule 7, be under a continuing obligation until the conclusion of the trial to give discovery of any document relevant to any matter in question and not already discovered by that party.

(2) A party that has been ordered under rule 7 to give discovery shall, subject to the order, be under a continuing obligation until the conclusion of the trial to give discovery of any document to which the order relates and not already discovered by that party.

(3) Discovery under subrule (1) or (2) shall be given in accordance with subrules (4) and (5).

(4) A party shall give discovery to another party forthwith after the party becomes aware of a discoverable document unless the document came into existence after discovery was given under rule 1 or under an order made under rule 7 and —

(a) is a communication between 2 or more of the parties or their solicitors; or

(b) is privileged from production.

(5) At least 21 days before the trial a party shall give discovery of any document that has not already been discovered by that party, including documents referred to in subrule (4)(a) and (b).

(6) Discovery under this rule shall be given by filing and serving on the other parties a supplementary list in accordance with rule 4 showing the relevant documents together with a verifying affidavit.

[Rule 2 inserted: Gazette 28 Oct 1996 p. 5675-6; amended: Gazette 28 Jun 2011 p. 2552-3.]

*[**2A.** Deleted: Gazette 28 Oct 1996 p. 5675.]*

3. Determination of issue relevant to right to discovery

If the Court is satisfied that the right to discovery or inspection of documents depends on the determination of any issue or question in the cause or matter or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding such right the Court may order that the issue or question be determined first and may reserve an application under this Order for further consideration.

[Rule 3 amended: Gazette 28 Oct 1996 p. 5676.]

4. List of documents and verifying affidavit, form, content and making of

(1) The list of documents made in compliance with rule 1 or with an order under rule 7 must be in Form No. 17, and must enumerate the documents in a convenient order and as shortly as possible, but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified, and must be filed within 10 days after

the service of the requisition, or within the time directed by the order.

(2) If it is claimed that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit verifying a list of documents must be in Form No. 18.

(4) Any list of documents or affidavit verifying such list may be made —

(a) by the party;

(b) where the party is the State or an officer of the State sued or suing in his official capacity — by an officer of the State;

(c) where the party is a body corporate or a body of persons empowered by law to sue or be sued whether in its own name or in the name of any officer or other person — by a member or officer of the corporation or body,

and in the case of an order against any party to which paragraph (b) or (c) applies the order must specify the person who is to comply with the order on behalf of the party.

[Rule 4 amended: Gazette 30 Nov 1984 p. 3953; 28 Oct 1996 p. 5676; 19 Apr 2005 p. 1298.]

5. Defendant entitled to copy of co-defendant's list etc.

(1) Any defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under rule 1, 2 or 7 on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) On request made by a party entitled to a copy of a list of documents, the party required by subrule (1) to supply the same must supply it free of charge.

(3) In this rule ***list of documents*** includes an affidavit verifying a list of documents.

[Rule 5 amended: Gazette 28 Oct 1996 p. 5676; 28 Jun 2011 p. 2552.]

6. Order for information as to particular documents

(1) Subject to rule 7 the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document specified or described is, or has at any time been, in his possession custody or power, and if not then in his possession custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 1 or rule 7.

(3) An application under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document or class of document specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

[Rule 6 amended: Gazette 28 Oct 1996 p. 5676.]

7. Orders as to discovery

(1) An application for an order under this rule may be made at any time by —

(a) a party whose request under rule 1 for discovery has not been satisfied; or

(b) a party who has been requested under rule 1 to give discovery, whether or not the party has complied with the request.

(2) An affidavit in support of the application is not necessary.

(3) On an application, or at any time of its own motion in any proceedings, the Court, having regard to Order 1 rule 4B, may —

(a) order any or all of the parties to give discovery at that stage or at some specified future stage of the action;

(b) as to the documents to be discovered by any party —

(i) order that discovery be given of only those specified documents or specified classes of document;

(ii) order that discovery be given of only those documents that are directly relevant to any specified matter in question or to all matters in question;

(iii) order that discovery be given of all documents relating to any specified matter in question or to all matters in question;

(c) make orders as to which parties are to be given discovery by any specified party;

(d) order that any or all of the parties not give discovery at that stage of the action, or at all;

(e) order any or all parties to make, file and serve an affidavit verifying the party's list of documents discovered.

(4) For the purposes of this rule if a party is ordered to give discovery, the party shall, subject to the order, make and serve, a list of the documents that are or have been in the party's possession, custody or power.

[Rule 7 inserted: Gazette 28 Oct 1996 p. 5677-8.]

8. Inspection of documents in list

(1) A party who has served a list of documents on any other party in compliance with rule 1 or with an order under rule 7 must allow the other party to inspect the documents mentioned in the list, other than any which he objects to produce, and must when serving the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at the place specified in the notice.

(2) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for inspection by the party giving the notice.

(3) The party on whom a notice is served under subrule (2) must within 4 days after service of the notice serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents or such of them as he does not object to produce, may be inspected at the place specified in the notice, and stating which, if any, of the documents he objects to produce and the grounds of his objection.

(4) Subject to rule 9, inspection under this rule shall be made at the office of the solicitor for the party producing the documents or if the party appears in person at a place that is reasonable for the purpose or in the case of bankers' books or other books of account or books in constant use for the purpose of any trade or business, at their usual place of custody.

(5) The party making the inspection shall be entitled to make copies of any documents produced for inspection under this rule.

[Rule 8 amended: Gazette 7 Dec 1973 p. 4489; 28 Oct 1996 p. 5678; 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552.]

8A. Procedure on discovery

(1) Documents delivered or produced under these rules are —

(a) to be —

(i) in bundles, files, folders or receptacles; and either

(ii) grouped according to topic, class, category, allegation in issue or otherwise; or

(iii) in an order or sequence,

making the documents readily accessible to and capable of convenient inspection by the party to whom they are delivered or produced; and

(b) to be so identified or indexed by number, description or otherwise as to enable particular documents to be readily retrieved on later occasions.

(2) The party producing the documents must provide facilities for inspection and copying of the documents and make available a person able to —

(a) explain the arrangement used; and

(b) assist in locating and identifying particular documents or classes of documents.

(3) An existing arrangement of documents already in use by a party —

(a) is not to be disturbed more than is necessary to achieve substantial compliance with subrule (1)(a); and

(b) if the party so requires, is not to be disturbed at all.

[Rule 8A inserted: Gazette 26 Aug 1994 p. 4411-12; amended: Gazette 28 Jun 2011 p. 2552.]

9. Order for inspection of documents

(1) Where a party who is required by rule 8(1) to serve the notice therein mentioned, or who is served with a notice under rule 8(3) —

(a) fails to serve the notice under rule 8(1) or as the case may be rule 8(3); or

(b) objects to produce any document for inspection; or

(c) offers inspection at a time or place which in the opinion of the Court is unreasonable for such purpose,

the Court may on the application of the party entitled to inspection make an order for production of the documents in question for inspection at such time and place, and in such manner as it thinks fit.

(2) Without prejudice to subrule (1) but subject to rule 11 the Court may on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application under subrule (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that such documents are in the possession, custody or power of the other party, and relate to a matter in question in the cause or matter.

[Rule 9 amended: Gazette 28 Jun 2011 p. 2552.]

10. Order for production to Court

At any stage of the proceedings in any cause or matter the Court may subject to rule 11 order any party to produce to the Court any document in his possession, custody or power, relating to

any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

11. Order for production etc. only if necessary

No order for production of any documents for inspection or to the Court shall be made unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

11A. Costs of preparing document to facilitate inspection

Unless the Court otherwise orders for the purposes of inspection the reasonable costs of supplying a copy of a document in a form in which it is capable of being understood by visual means alone shall be included in the party and party costs in the proceedings.

[Rule 11A inserted: Gazette 5 Jun 1992 p. 2281.]

12. Claim of privilege

(1) Where —

(a) on an application for production of a document for inspection or to the Court; or

(b) in any list of documents supplied on discovery,

a party claims privilege the party requiring production or discovery may traverse the claims to privilege by adducing evidence either that the claim to privilege is unfounded or mistaken, but in the absence of any evidence to that effect the claim to privilege shall be sustained.

(2) In determining any objection on the ground of privilege to the production or discovery of any document or class of document the Court may inspect the document.

13. Inspection of copies of business books

Where inspection of any business books is applied for the Court may instead of ordering inspection of the original books order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

[Rule 13 amended: Gazette 14 Dec 1979 p. 3870.]

14. Public interest immunity not affected

The provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

15. Non-compliance with requirements for discovery etc.

(1) If any party who is required by any of the rules of this Order or by any order made thereunder, to give discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provisions of that rule or with that order, as the case may be, then without prejudice, in the case of a failure to comply with any such provision, to rules 7 and 9(1) the Court may make such order as it thinks just including in particular, an order that the action be dismissed or as the case may be, an order that the defence be struck out and judgment entered accordingly.

(2) If any party fails to comply with an order for discovery or production of documents then, without prejudice to subrule (1) he shall be liable to attachment.

(3) Service of an order for discovery or production of documents on the solicitor for the party against whom the order has been made

shall be sufficient service to found an application to enforce the order, but it shall be an answer to the application if the party shows that he had no notice or knowledge of the order.

(4) A solicitor on whom an order against his client for discovery or production of documents is served under subrule (3) who fails without reasonable excuse to give notice thereof to his client shall be liable to attachment.

[Rule 15 amended: Gazette 28 Oct 1996 p. 5678; 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552.]

*[**15A.** Deleted: Gazette 28 Jul 2010 p. 3471.]*

16A. Certificate by legal practitioner

The legal practitioner of a party giving discovery must —

(a) sign a certificate addressed to the Court that —

(i) states that the duty of discovery has been fully explained to the party; and

(ii) if the party is a corporation, identifies the individual, or individuals, to whom the duty was explained;

and

(b) file the certificate when or immediately after the party's list of documents is served.

[Rule 16A inserted: Gazette 28 Jul 2010 p. 3471; amended: SL 2022/74 r. 15.]

16. Revocation and variation of orders

Any order which has been made under this Order, including an order made on appeal, may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in relation to which the original order was made.

Order 26A — Discovery etc. from non-parties and potential parties

[Heading inserted: Gazette 28 Oct 1996 p. 5678.]

1. Terms used

In this Order, unless the contrary intention appears —

description, in relation to person who is or may be a potential party, includes the person's name, sex, age, occupation, place of residence, place of business and whether the person is an individual, a body corporate or an unincorporated body of persons;

document has the same definition as in Order 26 rule 1A;

possession includes custody or power.

[Rule 1 inserted: Gazette 28 Oct 1996 p. 5678.]

2. Public interest immunity not affected

This Order does not affect any rule of law that authorises or requires the withholding of a document on the ground that its disclosure would be injurious to the public interest.

[Rule 2 inserted: Gazette 28 Oct 1996 p. 5679.]

3. Discovery etc. to identify a potential party

(1) This rule applies if a person who appears to have a cause of action against a person (the ***potential party***) wants —

(a) to commence proceedings against the potential party; or

(b) to take proceedings against the potential party in the course of an action to which the person is a party,

but the person, after reasonable enquiries, has not been able to ascertain a description of the potential party sufficient for the purposes of doing so.

(2) If there are reasonable grounds for believing that another person (the ***non-party***) had, has, or is likely to have had or to have, possession of information, documents or any object that may assist in ascertaining the description of the potential party, the person may apply for an order under this rule.

(3) The application shall be supported by an affidavit and a copy of both shall be served on the non-party.

(4) On the application the Court may order the non-party, and if the non-party is a body corporate, a person having the management of the body to do either or both of the following:

(a) to give discovery to the applicant of all documents that are or have been in the non-party's possession relating to the description of the potential party;

(b) to personally attend the Court to be examined in relation to the description of the potential party.

(5) If the Court orders a person to personally attend the Court, it may order the person to produce to the Court any document or object in the non-party's possession that relates to the description of the potential party.

(6) The Court may direct that the examination of the person be by a registrar.

(7) A person required to personally attend the Court shall be entitled to the like conduct money and payment for expenses and loss of time as on an attendance at a trial in Court.

[Rule 3 inserted: Gazette 28 Oct 1996 p. 5679-80.]

4. Discovery from potential party

(1) This rule applies if a person who may have a cause of action against a person whose description has been ascertained (the ***potential party***) wants —

(a) to commence proceedings against the potential party; or

(b) to take proceedings against the potential party in the course of an action to which the person is a party,

but the person, after reasonable enquiries, has not been able to obtain sufficient information to enable a decision to be made as to whether to commence or take the proceedings.

(2) If there are reasonable grounds for believing that the potential party had, has, or is likely to have had or to have, possession of documents that may assist in making the decision, the person may apply for an order under this rule.

(3) The application shall be supported by an affidavit and a copy of both shall be served on the potential party.

(4) On the application the Court may order the potential party to give discovery of all documents that are or have been in the potential party's possession and that may assist the applicant in making the decision.

[Rule 4 inserted: Gazette 28 Oct 1996 p. 5680.]

5. Discovery from non-party

(1) If there are reasonable grounds for believing that a person who is not party to an action (the ***non-party***) had, has, or is likely to have had or to have, possession of documents that relate to any matter in question in the action, a party to the action may apply for an order under this rule.

(2) The application shall be supported by an affidavit and a copy of both shall be served on the non-party and the other parties to the action.

(3) On the application the Court may order the non-party to give discovery of all documents that are or have been in the non-party's possession and that relate to any matter in question in the action.

[Rule 5 inserted: Gazette 28 Oct 1996 p. 5680-1.]

6. Order 26 applies to discovery ordered under this Order

(1) A court making an order for discovery under this Order may exercise any of the powers in Order 26 rule 7(3).

(2) Order 26 applies in relation to any discovery that under this Order is ordered to be given as if it had been ordered under Order 26 rule 7.

[Rule 6 inserted: Gazette 28 Oct 1996 p. 5681.]

7. Costs

(1) An order made under this Order may be made on the condition that the applicant give security for the costs and expenses of the person against whom the order is made, both in respect of the application and of complying with the order and with this Order.

(2) On an application under this Order the Court may make orders as to the costs and expenses —

(a) of any person in respect of the application; and

(b) of a person against whom an order is made in respect of complying with the order and with this Order.

[Rule 7 inserted: Gazette 28 Oct 1996 p. 5681.]

8. Certificate by legal practitioner for non-party or potential party

(1) This rule applies to these legal practitioners —

(a) the legal practitioner (if any) who drafts the list of documents, or the affidavit verifying the list, for a non-party who has been ordered under rule 3 or 5 to give discovery;

(b) the legal practitioner (if any) who drafts the list of documents, or the affidavit verifying the list, for a potential party who has been ordered under rule 4 to give discovery.

(2) This rule does not limit the operation of rule 6(2).

(3) A legal practitioner to whom this rule applies must —

(a) sign a certificate addressed to the Court that —

(i) states that the duty of discovery has been fully explained to the non-party or potential party (as the case requires); and

(ii) if that party is a corporation, identifies the individual, or individuals, to whom the duty was explained;

and

(b) file the certificate when or immediately after the list of documents is served.

[Rule 8 inserted: Gazette 28 Jul 2010 p. 3471-2; amended: SL 2022/74 r. 15.]

Order 27 — Interrogatories

1. Notice of and answers to interrogatories

(1) Subject to this rule any party may with the leave of the Court serve notice on any other party requiring him to answer specified interrogatories relating to any matter in question between the party interrogating and the party served.

(2) If the party interrogating so elects in the notice the answers may take the form of a statement signed by the person answering, but otherwise the answers to the interrogatories shall be by a statement verified by affidavit.

[(3) deleted]

(4) A party or person who wilfully makes a false statement in answer to an interrogatory shall be guilty of contempt of court and shall be punishable accordingly.

[Rule 1 amended: Gazette 24 Jan 1995 p. 270; 28 Oct 1996 p. 5681; 28 Jul 2010 p. 3472.]

2. Answers, time for and manner of giving

A party required under rule 1 to answer interrogatories shall answer the interrogatories by filing within 14 days of the day on which the interrogatories were served the statement referred to in rule 1(2) and the verifying affidavit, if required, and serving on the interrogating party within the same time a copy of the document, or, as the case may be of each such document filed.

3. Interrogatories given to 2 or more parties etc., who has to answer

Interrogatories served on 2 or more parties or which are required to be answered by an agent or servant of a party shall have a note at the end thereof stating which of such interrogatories each of such persons is required to answer.

4. Content of answers

The statement in answer to interrogatories required by or under this Order must deal with each interrogatory specifically, by answering its substance without evasion, or objecting to answer on one or more of the grounds specified in rule 5 and stating briefly the facts on which the objection is taken.

5. Grounds for objecting to answer

(1) A party may object in his statement in answer to interrogatories to answer any interrogatory on one or more of the following grounds —

(a) that it is scandalous or irrelevant, not bona fide for the purpose of the proceeding, unreasonable, prolix, oppressive or unnecessary;

(b) that the matters inquired into are not sufficiently material at that stage;

(c) privilege;

(d) any other ground on which objection may be taken.

(2) Where on an application under rule 7 the Court decides that an objection by the party interrogated to answering an interrogatory is not sufficient or the party interrogated does not object to answering an interrogatory, that party shall not be entitled to object to answer that interrogatory in a statement in answer to interrogatories.

[Rule 5 amended: Gazette 15 Jun 1973 p. 2248.]

6. Answers, who can make

(1) A statement or an affidavit verifying a statement in answer to interrogatories may be made as follows —

(a) by the party;

(b) where the party is the State or an officer of the State sued or suing in his official capacity — by an officer of the State;

(c) where the party is a body corporate or a body of persons empowered by law to sue or be sued whether in its own name or in the name of any officer or other person — by a member or officer of the corporation or body.

(2) In the case of an order against any party to which subrule (1)(b) or (c) applies the order shall specify the person who is to comply with the order on behalf of the party.

(3) Subject to subrule (2) a party to which subrule (1)(b) or (c) applies shall in relation to each interrogatory choose a person to make the statement (and verifying affidavit, if required) who is qualified under subrule (1)(b) or (c), as the case may be, and has knowledge of the facts.

[Rule 6 amended: Gazette 19 Apr 2005 p. 1298; 28 Jun 2011 p. 2552 and 2554.]

7. Failing to answer or to answer sufficiently

If any person on whom interrogatories have been served fails, within the prescribed time or within such other time as the Court may allow, to answer the interrogatories or answers any of them insufficiently, the Court may make an order requiring him to answer or answer further as the case may be, by a statement verified by affidavit or may order him or any of the persons mentioned in rule 6(1)(b) or (c) as the case may require to attend for oral examination.

8. Non-compliance with order under r. 7

(1) If any party against whom an order is made under rule 7 fails to comply with it, the Court may make such order as it thinks just including in particular an order that the action be stayed or dismissed, or as the case may be, an order that the defence be struck out and that judgment be entered accordingly.

(2) Any party who fails to comply with an order made against him under rule 7 shall, without prejudice to subrule (1), be liable to attachment.

(3) Service of an order to answer interrogatories or to make a further answer, on the solicitor for the party against whom the order has been made shall be sufficient service to found the application to enforce the order, but it shall be an answer to the application if the party shows that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories or make further answer is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to attachment.

[Rule 8 amended: Gazette 21 Feb 2007 p. 536; 28 Jun 2011 p. 2552.]

9. Use of answers in evidence

At the trial of a cause or matter or of any issue therein, a party may tender as evidence some only of the answers to interrogatories, or part only of such an answer without tendering the others or the whole of such answer: provided that the Court may look at the whole of the answers and if of opinion that any other answer or any other part of an answer is so connected with an answer or part of an answer which has been tendered, that the matter tendered ought not to be used without that other answer or part, the Court may reject the matter tendered unless the other answer or part is also tendered.

10. Revoking and varying orders

Any order which has been made under this Order including an order made on appeal, may on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in relation to which the original order was made.

Order 28 — Medical examination: inspection of physical objects

1. Medical examination of a party

(1) Where it becomes material in any cause or matter before the Court to consider the question of the physical or mental condition of any party, any opposing party may serve on such first-mentioned party a notice to submit himself for examination at a specified time and place by a medical practitioner provided and paid by the party requiring the examination. At any such examination a medical adviser chosen by the party to be examined shall be entitled to be present if the party so desires.

(2A) Where the party objects to complying with the notice, or in default of agreement as to the time and place of the examination, or if any matter shall arise in relation to such examination, either party may apply to the Court for an order as to whether or not the objecting party shall submit himself for examination, or as to when and where such examination may be made, or as to any other matters to facilitate the examination.

(2B) If the Court is of opinion that either party has been unreasonable in the matter it may order that party to pay the costs of the application and any other costs unnecessarily incurred in consequence.

(2) A reasonable sum to cover the travelling and other expenses of the party to be examined of and incidental to the examination, including the expenses of having the medical adviser chosen by him attend the examination, shall on demand be paid to the party to be examined by the party requiring the examination.

(3) If any party fails to submit himself for examination as required by this rule, or in any way obstructs the examination, the Court may order that the proceedings be stayed, either wholly or in part, until the examination has taken place, or that any pleading be struck out.

(4) The examining medical practitioner shall make a written report of his examination to the party who required the examination and that party shall serve on the party who has been examined a full and true copy of such report.

(5) If default be made for one week in serving the copy mentioned in subrule (4) or if the party examined alleges that the report is insufficient or incomplete, such party may obtain an order for service of the report or of a further and better report and the Court may direct that if the order be not complied with within a time to be therein specified the claim or defence be struck out or the proceedings be stayed. Unless otherwise directed the costs of obtaining such order shall be borne by the party in default.

(6) In this rule the expression ***party*** includes a person for whose benefit an action is brought pursuant to the *Fatal Accidents Act 1959*.

[Rule 1 amended: Gazette 28 Jun 2011 p. 2552 and 2554.]

2. Inspection of physical objects

(1) Where one party alleges that another party to any cause or matter has in his possession or control some physical object, not in the nature of a document, the inspection of which is material for the proper presentation of his case such first-mentioned party may by notice in writing require the other to permit inspection by the party requiring it with, or without, his solicitor or expert adviser.

(2) The party required to permit inspection shall nominate a time and place for inspection. In default of agreement as to the time and place, or if any matter shall arise in relation to such inspection, either party may apply to the Court for an order specifying how and when and where such inspection may be made.

(3) If the Court is of opinion that either party has been unreasonable in relation to the matter it may order that party to pay the costs

of the application, and any other costs unnecessarily incurred in consequence.

[Order 29: r. 1-2 deleted: Gazette 16 Aug 2017 p. 4411. r. 3-6 deleted: Gazette 28 Jul 2010 p. 3464.]

[Order 29A deleted: Gazette 28 Jul 2010 p. 3465.]

Order 30 — Admissions

1. Admission of other party's case

Without prejudice to Order 20 rule 14 any party to a cause or matter may give notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the case of any other party.

2. Notice to admit facts

(1) A party to a cause or matter may by notice in writing at any time not later than 7 days before the day for which notice of trial has been given or which has otherwise been appointed for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, a fact or facts specified in the notice.

(2) Any admission made in pursuance of a notice to admit facts shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made, or in favour of any person other than the person by whom the notice was given.

(3) The Court may at any time allow a party to amend or withdraw an admission made under this rule on such terms as may be just.

3. Judgment on admissions

(1) Where admissions of fact have been made on the pleadings or otherwise, any party may at any stage of a cause or matter apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may on such application make such order or give such judgment as the Court thinks just.

(2) An application under this rule may be made on motion or by summons.

4. Admissions as to and production of documents

(1) A party on whom a list of documents is served in pursuance of any provision of Order 26 (which relates to the discovery and inspection of documents) shall unless the Court otherwise orders, and without prejudice to his right to object to the admission in evidence of any document, be deemed to admit —

(a) that a document if described in the list as an original document, is an original document and was printed, written, signed or executed as it purports to have been; or

(b) that a document if described in the list as a copy, is a true copy.

(2) Subrule (1) does not apply —

(a) to a document the authenticity of which has been denied by a party in his pleading; or

(b) to a document concerning which a party within 14 days after the time limited under Order 26 for inspection serves on the party giving inspection, a notice that he disputes the authenticity of that document.

(3) Where a party serves on any other party a list of documents in pursuance of Order 26 the party serving the list shall be deemed to have been served on the date of service of the list, with a notice requiring production by him at the trial of the cause or matter, of such of the documents specified in the list as are in his possession, custody or power.

(4) Subrules (1), (2) and (3) apply in relation to an affidavit made in compliance with an order under Order 26 rule 6, as they apply to a list of documents served under that Order.

[Rule 4 amended: Gazette 28 Jun 2011 p. 2552.]

5. Notice to admit authenticity of documents; notice requiring production of documents at trial

(1) A party to any proceedings may serve on any other party a notice requiring him to admit for the purpose of those proceedings only, the authenticity of the documents specified in the notice, and the notice must specify a reasonable time and place for inspection.

(2) If, in relation to any document specified in the notice, the party on whom a notice under subrule (1) is served does not within 7 days after the time limited for inspection serve on the party giving the notice, a notice disputing the authenticity of the document, its authenticity shall, unless the Court otherwise orders, be deemed to be admitted by the party on whom the notice under subrule (1) is served.

(3) Except where rule 4(3) applies, a party to any proceedings may serve on any other party a notice requiring him to produce at the trial or hearing the documents specified in the notice.

[Rule 5 amended: Gazette 28 Jun 2011 p. 2552.]

Order 31 — Special cases and stated cases

1. Questions of law, stating of in special case

(1) The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court or of the Court of Appeal.

(2) The special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised by the special case.

(3) Upon the argument of the case the Court and the parties may refer to the whole contents of the documents stated.

[Rule 1 amended: Gazette 15 Jun 1973 p. 2248; 29 Apr 2005 p. 1795.]

2. Preliminary question of law, orders as to

(1) If it appears to the Court that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court may deem expedient.

(2) All such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

3. Preparing special case

(1) Every special case shall be prepared by the plaintiff or the party having the carriage of the proceedings and shall be signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff or the party having carriage of the proceedings.

(2) At least 14 days before the day appointed for argument the plaintiff or the party having the carriage of the proceedings shall file copies of the special case for the use of the judge or judges hearing the argument, and in default thereof the other party may on the day following, file those copies.

[Rule 3 amended: Gazette 27 Feb 2018 p. 560-1.]

4. Special case affecting person under disability, leave needed to enter for argument

(1) A special case in any cause or matter to which a person under disability is a party shall not be set down for argument without the leave of the Court.

(2) An application for leave under subrule (1) shall be supported by sufficient evidence that the statements contained in the special case, so far as they affect the interest of the party under disability, are true.

[Rule 4 amended: Gazette 28 Jun 2011 p. 2552.]

5. Entering special case for argument

(1) Either party may enter a special case for argument before the Court, by filing a memorandum of entry, and if a person under disability is a party, by producing a sealed copy of the order giving leave to enter the same for argument.

(2) On the day on which a special case is entered for argument the party entering it shall serve notice of the entry on all other parties.

[Rule 5 amended: Gazette 27 Feb 2018 p. 561.]

6. Agreement as to payment of money and costs

(1) The parties to a special case may, if they think fit, enter into an agreement in writing that, on the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by the special case, a sum of money, fixed by the

parties, or to be ascertained by the Court or in such manner as the Court may direct, shall be paid by a party to another party, either with or without costs of the cause or matter.

(2) The judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

7. Reference of case to Court of Appeal (Act s. 58(1)(d))

A judge may order that a special case which has been set down for hearing before the Court shall be argued before the Court of Appeal.

[Rule 7 amended: Gazette 29 Apr 2005 p. 1795.]

8. Cases stated to Court (not Court of Appeal) by other courts etc.

(1) This rule applies to cases not stated in the Court and to cases stated by any tribunal which is empowered or may be required to state a case on a question of law for determination by or the opinion of the Court.

(1a) This rule does not apply to a case stated by a tribunal which is empowered or may be required to state a case on a question of law for determination by or the opinion of the Court of Appeal.

(2) Every case to which this rule applies shall be entered for argument before the Court, and any party may file the memorandum of entry, and the party making the entry shall on the same day serve on all other parties a copy of the case and notice of the entry.

(3) Rule 1(3), rule 3(2) and rule 7 shall apply to cases under this rule as they apply to special cases stated in the Court.

(4) On the hearing of the case, the Court may order it to be sent back to the tribunal for amendment with such directions (if any) as the Court thinks fit.

(5) The proper officer shall notify the tribunal of the decision of the Court on the case, and of any directions given by that Court thereon.

(6) In this rule ***tribunal*** includes any authority or person which or who is empowered or may be required to state a case for determination by or the opinion of the Court.

[Rule 8 amended: Gazette 29 Apr 2005 p. 1791-2.]

[Order 31A deleted: Gazette 28 Jul 2010 p. 3466.]

Order 32 — Place and mode of trial

1. Trial in circuit town

Where the plaintiff proposes that the action be tried elsewhere than in Perth, he shall name in his writ the circuit town at which he proposes that it shall be tried and the action shall, unless the Court otherwise orders, be tried at sittings of the Court at that town.

[Rule 1 inserted: Gazette 27 Aug 1976 p. 3223.]

2. Application for trial by jury

The application for an order for the trial by a jury of any cause or matter, or of any issue of fact, shall be made not later than 7 days after the cause, matter, or issue has been entered for trial.

3. Usual mode of trial, other modes

In every cause or matter, unless an order for trial with a jury has been made, the mode of trial shall be by a judge without a jury, but in any such case the Court may at any time order that any cause, matter, or question or issue of fact shall be tried by a judge with a jury, or by a judge sitting with assessors, or by a referee with or without assessors.

4. Time of trial of questions or issues

The Court may order that any question or issue arising in a cause or matter whether of law or fact or partly of law and partly of fact, and whether raised by the pleadings or by agreement of the parties or otherwise be tried separately from any other question or issue whether before at or after the trial or further trial of the proceedings, and may direct that a case and the question or issue for decision be stated.

5. Issues may be tried differently

In any cause or matter the Court may at any time, or from time to time, order that different questions or issues arising therein be tried at different places or by different modes of trial, and that one or more questions or issues be tried before the others.

6. Trial with jury to be by single judge

A trial of a question or issue of fact with a jury shall be by a single judge.

7. Disposal of action

Where the decision of a question or issue under this Order —

(a) substantially disposes of the cause or matter; or

(b) renders unnecessary the trial or further trial of the cause or matter,

the Court may dismiss the cause or matter or give such judgment or make such other order as the nature of the case requires.

8. Trial by jury, precepts for etc.

If an order for trial by jury is made, Part 13 of the *Criminal Procedure Rules 2005*, with any necessary changes, applies for the purposes of the *Juries Act 1957* and its application to the trial.

[Rule 8 inserted: Gazette 29 Apr 2005 p. 1801.]

Order 33 — Entry for trial

1. Entry for trial

A party cannot enter a cause, matter or issue for trial unless —

(a) the party is satisfied —

(i) that all of the interlocutory steps in relation to the cause, matter or issue are complete; and

(ii) that the cause, matter or issue is ready for entry;

or

(b) the party is directed by the Court to do so.

[Rule 1 inserted: Gazette 16 Aug 2017 p. 4411.]

2. Consequences of failing to enter for trial as directed

(1) In this rule —

entry period, in relation to a direction under rule 1(b), means the period starting on the day the direction is given and ending —

(a) at the time specified in the direction as the time by which the cause, matter or issue must be entered for trial; or

(b) if a time by which the cause, matter or issue must be entered is not specified in the direction, 4 weeks after the day on which the direction is given.

(1A) A party may enter a cause, matter or issue for trial if another party has been directed under rule 1(b) to enter the cause, matter or issue for trial and has not done so before the end of the entry period.

(1B) A party may apply to the Court for an order dismissing, for want of prosecution, a cause or matter in respect of a plaintiff's claim or an issue raised by a plaintiff against the party, if the plaintiff has been directed under rule 1(b) to enter the cause, matter or issue for trial and has not done so before the end of the entry period.

(2) On an application under subrule (1B) to dismiss the cause or matter for want of prosecution, the Court may make such order as may be just either dismissing the claim or striking out the issue or permitting it to go to trial with or without the imposition of terms.

[(3) deleted]

[Rule 2 amended: Gazette 16 Aug 2017 p. 4412.]

3. Notice of entry

(1) A party who has entered a cause, matter or issue for trial shall on the day of entry give notice thereof in writing to every party on the record who is entitled to be heard generally or on any issue.

[(2) deleted]

[Rule 3 amended: Gazette 16 Nov 2016 p. 5199.]

4. Form of entry for trial

(1) The entry for trial and notice of trial shall state whether it is for the trial of the cause or matter or of an issue therein and shall state the place of trial.

(2) Entry for trial and notice of trial shall be in such form and contain such information as the Chief Justice shall direct from time to time.

*[**5-13.** Deleted: Gazette 16 Aug 2017 p. 4412]*

14. Papers for judge

(1A) This rule applies unless otherwise directed by the Court.

(1) The party making an entry for trial shall file as a bundle each of the following documents —

(a) the pleadings and any affidavits ordered to stand as pleadings; and

(b) any request or order for particulars and the particulars given; and

(c) any order for directions made under Order 19 rule 4; and

(d) where an issue in an action is being entered, any order relating to the trial of that issue.

(2) Where the pleadings are amended after entry for trial but before the trial, the party who made the entry shall forthwith after the filing of the amended pleading, or of any further pleading filed in consequence of the first amendment, file a further copy of the whole of the pleadings as amended.

(3) Where the pleadings are amended at trial a party must file a further copy of the whole of the pleadings as amended.

(4) All copies of pleadings required by this rule to be filed must be clear copies of the pleadings as amended, with a suitable notation of the date or dates of any amendments.

(5) The party filing copies of pleadings (including copies of the pleadings as amended) shall on the day of filing or on the next following day serve a copy thereof on each of the other parties on the record.

(6) The costs of preparation, filing and serving of further copies of pleadings shall be in the discretion of the judge at trial and shall not be allowed without a certificate of the judge.

[Rule 14 amended: Gazette 10 Jan 1975 p. 50; 16 Aug 2017 p. 4413; 27 Feb 2018 p. 561.]

Order 34 — Proceedings at trial

1A. Outlines for trial

(1) Unless the Court orders otherwise, each party who is directed to provide an outline must file and serve it on each other party —

(a) if the outline is on paper, at least 4 clear days before the trial; or

(b) if the outline is in a digital form, at least 2 clear days before the trial.

(2) A party's outline must contain —

(a) a summary of the submissions the party intends to make at the trial; and

(b) if the party considers it would be useful at the trial, a chronology of relevant events; and

(c) a list of the cases and legislation referred to in the submissions.

[Rule 1A inserted: Gazette 16 Aug 2017 p. 4413-14.]

1. Absence of both parties at trial

If, when the trial of an action is called on, neither the plaintiff nor the defendant appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

2. Absence of one party at trial

If, when a trial is called on, one party does not appear the judge may proceed with the trial of the action or of any counterclaim in the absence of that party.

3. Setting aside judgment given in absence of party

Any judgment, order, or verdict obtained where one party does not appear at the trial may be set aside by the Court upon such

terms as the Court thinks just upon application made within 14 days after the trial.

4. Adjournment of trial

The judge may if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

5. Conduct of trial

(1) The Court (whether the trial is with or without a jury) may give directions as to the party who is to begin and the order of addresses at the trial, and subject to any such directions, the party to begin and the order of addresses shall be as provided by the following subrules.

(2) Except in cases where the burden of proof of all issues rests with the defendant, the plaintiff shall open his case and adduce evidence.

(3) If at the conclusion of the evidence for the party who begins, the opposite party elects to adduce no evidence, the party who begins may make an address closing his case, and the opposite party may make an address stating his case.

(4) If at the conclusion of the evidence for the party who begins, the opposite party elects to adduce evidence, he may open his case, and after adducing his evidence, he may make a second address closing his case, and the party who begins may then make an address closing his case.

(5) At the conclusion of all the evidence at a trial, the Court may direct the parties to file written submissions instead of or as adjuncts to their closing addresses.

[Rule 5 amended: Gazette 28 Oct 1996 p. 5695; 28 Jun 2011 p. 2552-3; 27 Feb 2018 p. 561.]

5A. Time etc. limits at trial

(1) A judge may at any time by direction —

(a) limit the time to be taken in examining, cross-examining or re-examining a witness;

(b) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;

(c) limit the time to be taken in making any oral submission;

(d) limit the time to be taken by a party in presenting its case;

(e) limit the time to be taken by the trial;

(f) amend any such limitation.

(2) In deciding whether to make any such direction, a judge shall have regard to these matters in addition to any other matters that may be relevant —

(a) the time limited for a trial must be reasonable; and

(b) any such direction must not detract from the principle that each party is entitled to a fair trial; and

(c) any such direction must not detract from the principle that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses; and

(d) the complexity or simplicity of the case; and

(e) the number of witnesses to be called by the parties; and

(f) the volume and character of the evidence to be led; and

(g) the state of the Court lists; and

(h) the time expected to be taken for the trial; and

(i) the importance of the issues and the case as a whole.

[Rule 5A inserted: Gazette 28 Oct 1996 p. 5695-6.]

6. Evidence in mitigation of damages for defamation

In actions for defamation in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the defamation was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he files and serves on the plaintiff particulars of the matters as to which he intends to give evidence.

[Rule 6 amended: Gazette 16 Aug 2017 p. 4414; 27 Feb 2018 p. 562.]

7. Inspection by judge or jury

(1) The judge before whom any cause or matter is heard or tried may inspect any property, place or thing concerning which a question arises in the cause or matter.

(2) Where a cause or matter is tried with a jury, and the judge inspects any property, place or thing under subrule (1), he may authorise the jury to inspect it also.

[Rule 7 amended: Gazette 28 Jun 2011 p. 2552.]

8. Judgment at or after trial

The judge may, at or after trial, direct that judgment be entered as he shall think right, or he may adjourn the case for further consideration, or leave any party to move for judgment.
No judgment shall be entered after trial without the order of a Court or judge.

9. Record of proceedings

The associate or other officer present at any hearing or trial shall maintain and complete a record of proceedings at the trial in a

form providing for such particulars as the Chief Justice may from time to time direct.

10. Where time occupied by trial excessive

(1) The judge may, if he considers the time occupied at a hearing or trial has been excessive, certify what time should have been so occupied, and that certificate shall be final.

(2) The certificate of a judge under subrule (1) shall be communicated to the taxing officer by the associate or other officer as the case may be.

[Rule 10 amended: Gazette 28 Jun 2011 p. 2552.]

11. Entry of findings of fact on trial

Upon every hearing or trial the associate or other officer shall enter all such findings of fact as the judge may direct to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose.

12. Certificate for entry of judgment

(1) If the judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate or other officer to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in such form and contain such information as the senior master may direct.

(2) If the judge directs that a judgment be entered for a party subject to leave to move, judgment shall be entered accordingly upon the filing of the certificate of the associate or other officer.

[Rule 12 amended: Gazette 13 Oct 1978 p. 3698; 30 Nov 1984 p. 3952.]

13. Exhibits

(1) The associate shall take charge of and mark every document or object put in as an exhibit during the trial of an action, and shall make a list of the exhibits which shall form part of the record.

(2) A bundle of documents put in evidence may be treated and marked as one exhibit.

[Rule 13 amended: Gazette 13 Oct 1978 p. 3698.]

14. Return of exhibits

(1) This rule does not apply to or in respect of any record or thing that forms part of the Court's record.

(2) After judgment in an action is given, a registrar must, unless the Court has ordered otherwise —

(a) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court to collect it from the court; and

(b) by a written notice, require any person who, under a subpoena, produced any record or thing to the Court that was not admitted in evidence, to collect it from the court.

(3) A registrar must not act under subrule (2) until —

(a) the time for commencing an appeal against the judgment expires; and

(b) any appeal commenced before that time expires is decided, dismissed or discontinued.

(4) Despite subrule (3), a registrar —

(a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or

(b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —

(i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or

(ii) it is necessary for that person to have use of the record or thing.

(5) If under subrule (4)(b) a registrar releases a record or thing to a person, the registrar may require the person, as a condition of being given it, to file a written undertaking as to the care, maintenance and custody of it and its re-delivery to the Court.

(6) If a record or thing remains in the possession of the Court after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a judge may order a registrar to destroy it or dispose of it in some other way.

[Rule 14 inserted: Gazette 21 Feb 2007 p. 539; amended: Gazette 27 Feb 2018 p. 562.]

*[**15.** Deleted: Gazette 21 Feb 2007 p. 539.]*

15A. Return of document etc. to non-party who produced it under subpoena

(1) A party to an action who subpoenas a document or object, belonging to a person not a party to the action, which was —

(a) marked for identification but not tendered; or

(b) neither marked nor tendered,

in the action must, at the completion of the hearing of the action, uplift the document or object forthwith and return it to the person named in the subpoena.

[Rule 15A inserted: Gazette 1 Mar 1994 p. 785.]

*[**15B.** Deleted: Gazette 21 Feb 2007 p. 539.]*

16. Death of party before judgment is given

(1) Where a party dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given and entered notwithstanding the death of that party.

(2) Subrule (1) does not affect the power of the Court to make orders under Order 18 rule 7(2).

[Rule 16 amended: Gazette 28 Jun 2011 p. 2552.]

17. Impounded documents

Impounded documents while in the custody of the Court are not to be parted with and are not to be inspected, except on the order of a judge or in case of documents impounded on the order of the Court of Appeal by an order of that Court. Such documents shall not be delivered out of the custody of the Court except upon an order made on motion in open court.

[Rule 17 amended: Gazette 29 Apr 2005 p. 1795.]

18. Assessment of damages by master

(1) This rule applies where the Court orders that the amount of damages for which judgment is to be entered shall be assessed by a master.

(2) The attendance of witnesses and the production of documents before the master may be compelled by subpoena.

(3) The master may adjourn the inquiry from time to time.

(4) The master shall certify by indorsement upon the order by which the question is referred to him, the amount of damages found by him and shall deliver the order with such indorsement to the person entitled to the damages.

(5) Such and the like proceedings may thereupon be had as to entering judgment, taxation of costs, and otherwise, as upon the finding of a jury upon an issue.

[(6) deleted]

[Rule 18 amended: Gazette 9 Nov 1973 p. 4162; 30 Nov 1984 p. 3951; 16 Nov 2016 p. 5199.]

19. Damages to time of assessment

(1) Where damages are to be assessed in respect of —

(a) any continuing cause of action;

(b) repeated breaches of recurring obligations;

(c) intermittent breaches of a continuing obligation,

the damages shall be assessed down to the time of assessment, including damages for breaches occurring after the proceedings were begun.

(2) Subrule (1) applies to the assessment of damages under this Order or otherwise.

[Rule 19 amended: Gazette 28 Jun 2011 p. 2552.]

20. Writ of inquiry not to be used

No writ of inquiry as to damages shall be issued in any cause or matter.

Order 35 — Assessors and referees

1. Trial with assessors

Trials with assessors shall take place in such manner and upon such terms as the Court shall direct.

2. Trial before referee

Where any cause or matter, or any question or issue of fact in any cause or matter, is referred to a referee for trial, he may, subject to the order of the Court, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court, proceed with the trial from day to day, in a similar manner as in actions tried with a jury.

3. Evidence before referee

Subject to any order by the Court ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner as nearly as circumstances will admit, as trials are conducted before a judge.

4. Authority of referee

Subject to any such order as is mentioned in rule 3, the referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party, as a judge of the Court.

5. Referee cannot order imprisonment

Nothing in these rules contained shall authorise any referee to commit any person to prison or to enforce any order by attachment or otherwise.

6. Referee may submit question to Court

The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence as the Court may direct.

7. Notice of referee's report

Whenever a report is made by a referee he shall cause notice thereof to be served forthwith on all parties to the trial or reference.

8. Adoption etc. of referee's report in adjourned case

Where the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court to adopt the report, or without leave of the Court to give not less than 4 days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee.

9. Adoption etc. of referee's report where case not adjourned

Where the report of the referee has been made in a cause or matter, the further consideration of which has not been adjourned, any party may, by an 8 days' notice of motion, apply to the Court to adopt and carry into effect the report of the referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee.

10. Costs

Where the whole of any cause or matter is referred to a referee under an order of the Court, he may, subject to any directions in the order, exercise the same discretion as to costs as the Court could have exercised.

11. Application of this Order to other references

(1) Subject to this rule, rules 2 to 10 apply where a cause or matter or a question or issue of fact therein is referred to a master, a registrar, or to a special referee or arbitrator.

(2) Rule 9 does not apply in relation to a reference to a master.

(3) The provisions of rule 2 as to sitting from day to day do not apply where the reference is to a master or to a registrar.

[Rule 11 inserted: Gazette 2 Jul 1982 p. 2316; amended: Gazette 30 Nov 1984 p. 3951.]

Order 36 — Evidence: general

1. Facts to be proved usually by oral evidence in open court

Subject to these rules and to the provisions of the *Evidence Act 1906*, and any other Act relating to evidence, any fact required to be proved at the trial of any action by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

2. Evidence by affidavit

(1) The Court may, before or at the trial or hearing of an action, order that all or any of the evidence therein shall be given by affidavit if the Court thinks that in the circumstances of the case it is reasonable so to order.

(2) An order under subrule (1) may be made on such conditions as the Court may think reasonable and in particular may give directions as to the filing and serving of the affidavits and the production of the deponents for cross-examination, but subject to such directions and any subsequent order of the Court, the deponents shall not be subject to cross-examination.

(3) Subject to these rules, evidence may be given by affidavit upon any originating summons, originating motion or petition, and on any application made by motion or summons, but the Court may order the attendance for cross-examination of the person making any such affidavit, and if such person fails to attend his affidavit shall not be used in evidence without the leave of the Court.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2552.]

3. Evidence of children etc. (*Evidence Act 1906* s. 106S)

(1) This rule applies to applications pursuant to section 106S of the *Evidence Act 1906*.

(2) Except with leave of the Court any application for an order or direction pursuant to section 106S of the *Evidence Act 1906*

shall be made by summons returnable in chambers at least 14 days before trial.

(3) The summons shall set out the order or the direction sought and shall be supported by an affidavit deposing to the grounds upon which the order or directions are sought.

[Rule 3 inserted: Gazette 30 Oct 1992 p. 5310-11.]

4. Reception of plans etc. in evidence

Unless before or at the trial the Court otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the trial the parties, other than the party who intends to produce it, are given the opportunity to inspect it and to agree to its admission without further proof.

5. Orders under r. 2 or 4 may be revoked or varied

An order under rules 2 and 4, including an order made on appeal, may on sufficient cause being shown be revoked or varied by a subsequent order of the Court made before or at the trial.

[Rule 5 amended: Gazette 13 Oct 1978 p. 3698.]

6. Trials of issues etc., evidence in

Rules 1 to 5 apply to trials of issues or questions of fact or law, and assessments of damages as they apply to the trial of actions.

[Rule 6 amended: Gazette 28 Jun 2011 p. 2554.]

7. Depositions as evidence

(1) A deposition taken in any cause or matter shall not be received in evidence at the trial or hearing of the cause or matter unless the deposition was taken pursuant to an order under Order 38 rule 1, and —

(a) the party against whom the deposition is tendered consents; or

(b) the deponent is dead or beyond the jurisdiction of the Court or is unable through sickness or other infirmity to attend the trial.

(2) Where a party intends to use a deposition in evidence at the trial of a cause or matter, he must notify the other party of his intention a reasonable time before the trial begins.

(3) A deposition purporting to be certified under the hand of the person before whom it was taken shall be receivable in evidence without proof that the signature is the signature of that person.

8. Court documents admissible in evidence

(1) Copies of writs, records, pleadings and documents filed in the Court shall be admissible in evidence in any cause or matter, and between all persons and parties to the same extent as the original would be admissible.

(2) Subject to the provisions of any Act every document purporting to be sealed with a seal of the Central Office shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in or issued out of the Court, shall be deemed to be a true copy of that document without further proof unless the contrary is shown.

[Rule 8 amended: Gazette 27 Feb 2018 p. 562.]

9. Evidence at trial may be used in subsequent proceedings

All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

10. Evidence in another cause

An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just

exceptions, be read on *ex parte* applications by leave of the Court, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving 2 days' previous notice to the other parties of his intention to read such evidence.

11. Production of documents

The Court may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court may think fit to be produced: provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

*[**12-15, 15A, 16, 16A, 17-19.** Deleted: Gazette 21 Feb 2007 p. 540.]*

20. Interest for purposes of Act s. 32

When computing interest for the purposes of section 32 of the Act, subject to any evidence adduced, the Court may use, as a guide, the rate of interest prescribed from time to time for the purposes of section 8 of the *Civil Judgments Enforcement Act 2004*.

[Rule 20 inserted: Gazette 26 Aug 1994 p. 4412; amended: Gazette 21 Feb 2007 p. 540.]

Order 36A — Expert evidence

[Heading inserted: Gazette 13 Oct 1978 p. 3699.]

1. Expert evidence

(1) A party may not adduce expert evidence at a trial of a cause or matter unless —

(a) the case manager for the case has directed that the party may do so; and

(b) the party has complied with all directions given in relation to that expert evidence.

(2) A party who is required to disclose expert evidence by a time set out in a direction may not, after that time, object to the disclosure on the ground of privilege as defined in the *Evidence Act 1906* section 32A.

[Rule 1 inserted: Gazette 16 Aug 2017 p. 4414-15.]

*[**2-9.** Deleted: Gazette 16 Aug 2017 p. 4414.]*

Order 36B — Subpoenas

[Heading inserted: Gazette 21 Feb 2007 p. 540.]

1. Terms used

(1) In this Order, unless the contrary intention appears —

addressee means the person who is the subject of the order expressed in a subpoena;

conduct money means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;

issuing officer means an officer empowered to issue a subpoena on behalf of the Court;

issuing party means the party at whose request a subpoena is issued;

Registry means the Central Office;

subpoena means an order in writing requiring the addressee —

(a) to attend to give evidence; or

(b) to produce the subpoena or a copy of it and a document or thing; or

(c) to do both of those things.

(2) To the extent that a subpoena requires the addressee to attend to give oral evidence, it is called a ***subpoena to attend to give evidence***.

(3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is called a ***subpoena to produce***.

(4) If a subpoena is to be served under the *Service and Execution of Process Act 1992* of the Commonwealth, this Order is subject to that Act and, with any necessary changes, applies to and in respect of the subpoena.

(5) Unless the Court orders otherwise, this Order is subject to Order 34 rule 15A.

[Rule 1 inserted: Gazette 21 Feb 2007 p. 540; amended: Gazette 22 Feb 2008 p. 636; 28 Jul 2010 p. 3477; 24 May 2017 p. 2566.]

2. Issuing subpoenas

(1) The Court may, in any proceeding, by subpoena order the addressee —

(a) to attend to give evidence as directed by the subpoena; or

(b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or

(c) to do both of those things.

(2) An issuing officer must not issue either a subpoena to attend to give evidence or a subpoena to produce —

(a) if a written law or a law of another Australian jurisdiction prohibits its issue; or

(b) if a written law or a law of another Australian jurisdiction prohibits its issue except with the Court's leave and the Court has not given that leave; or

(c) if the Court has ordered that the subpoena not be issued; or

(d) if the Court has ordered that the subpoena not be issued without the Court's leave and the Court has not given that leave.

(2A) An issuing officer must not issue a subpoena to attend to give evidence unless —

(a) the oral evidence of the addressee is required at one of the following —

(i) a trial of substantive issues in a proceeding;

(ii) an assessment of damages under Order 34 rule 18;

(iii) a trial ordered under Order 35 to be before a referee or other person;

(iv) an examination ordered under Order 38 to be before an examiner;

(v) any other proceeding at which, under an express provision of a written law, the attendance of a person may be enforced by a subpoena;

and

(b) a date has been set for the trial, assessment, examination or proceeding.

(2B) An issuing officer must not issue a subpoena to produce —

(a) if it would require the production of a document or thing in the custody of the Court or another court; or

(b) in a proceeding in which a defence is required to be filed, unless —

(i) the defence has been filed; or

(ii) the Court has given leave for the subpoena to be issued; or

(iii) the subpoena is being issued under Order 73 rule 20(2);

or

(c) in a proceeding in which a defence is not required to be filed, unless —

(i) the date and time for production is the date and time of a trial; or

(ii) the Court has given leave for the subpoena to be issued.

(2C) A party may apply for leave under subrule (2B)(b) or (c) without notice to any other party.

(2D) The Court must not give leave under subrule (2B)(b) or (c) unless satisfied there are exceptional circumstances.

(2E) If the Court gives leave to issue a subpoena to produce, it must set the date and time for production to be specified in the subpoena which must be —

(a) the date and time of the trial in the proceeding at which production is required; or

(b) an earlier date and time.

(3) The issuing officer must seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(3A) If the issuing officer issued the subpoena by means of the ECMS —

(a) the issuing party may print from the ECMS 1 or more copies of the subpoena; and

(b) a printed copy may be treated as a copy of the subpoena authenticated in accordance with subrule (3).

(4) A subpoena is taken to have been issued on its being sealed or otherwise authenticated in accordance with subrule (3).

[Rule 2 inserted: Gazette 21 Feb 2007 p. 541; amended: Gazette 24 May 2017 p. 2566-8; 27 Feb 2018 p. 562-3; 31 Dec 2019 p. 4677.]

3. Form of subpoena

(1) Subject to subrule (1A) —

(a) a subpoena to attend to give evidence must be in the form of Form 21;

(b) a subpoena to produce must be in the form of Form 21A;

(c) a subpoena both to attend to give evidence and to produce must be in the form of Form 21B.

(1A) Subrule (1) does not apply to a subpoena issued in proceedings under the *Trans-Tasman Proceedings Act 2010* (Commonwealth).

(2) A subpoena must not be addressed to more than one person.

(3) Unless the Court otherwise orders, a subpoena must identify the addressee by name or by description of office or position.

(4) A subpoena to attend to give evidence must specify the date and time and place at which the addressee is to attend.

(5) A subpoena to produce must specify —

(a) the date and time for production which must be —

(i) if the Court has given leave for the subpoena to be issued, the date and time set by the Court when giving leave; or

(ii) otherwise, the date and time of the trial which the addressee is to attend, or a date and time permitted by the issuing officer or a registrar;

and

(b) the place for production which must be —

(i) the address of the Court; or

(ii) the address of a person authorised to take evidence in the proceeding as permitted by the Court.

[(6), (7) deleted]

(8) The last date for service of a subpoena —

(a) is the date falling 5 days before the earliest date on which the addressee is required to comply with the subpoena or an earlier or later date fixed by the court; and

(b) must be specified in the subpoena.

(9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

[Rule 3 inserted: Gazette 21 Feb 2007 p. 541-2; amended: Gazette 22 Feb 2008 p. 636-7; 3 Aug 2012 p. 3749; 24 May 2017 p. 2568-9.]

*[**3A.** Deleted: Gazette 24 May 2017 p. 2569.]*

4. Service of subpoenas

(1) A subpoena must be served personally on the addressee.

(2) As soon as practicable after a subpoena is served on the addressee, the issuing party must serve a copy of it on each other party.

[Rule 4 inserted: Gazette 24 May 2017 p. 2569.]

5. Party may request notice that subpoena to produce has been obeyed

(1) A party may, in writing, request the Court to inform the party whether any document or thing has been produced to the court under a subpoena to produce.

(2) If a party has made a request under subrule (1), a registrar must inform the party whether any document or thing has been produced and, if so, include a description, in general terms, of the documents and things produced.

[Rule 5 inserted: Gazette 24 May 2017 p. 2570.]

5A. Altering date for attendance or production

(1) This rule does not apply to a subpoena to produce that has been issued with the leave of the Court under rule 2(2B)(b)(ii) or (c)(ii).

(2) The issuing party may give the addressee of a subpoena notice of a date or time later than the date or time specified in the

subpoena as the date or time for attendance or for production or for both.

(3) The later date or time specified in a notice given under subrule (2) must be —

(a) if the subpoena is a subpoena to attend to give evidence, a later date and time of a trial, assessment, examination or proceeding referred to in rule 2(2A);

(b) if the subpoena is a subpoena to produce in which the date and time for production is the date and time of a trial — a later date and time of a trial;

(c) if the subpoena is a subpoena to produce in which the date and time for production is not the date and time of a trial — any later date and time.

(4) As soon as practicable after giving a notice under subrule (2), the issuing party must —

(a) file a copy of the notice; and

(b) serve a copy of the notice on each other party.

(5) The notice need not be served personally.

(6) If notice is given under subrule (2), the subpoena has effect as if the date or time notified were specified in the subpoena instead of the date or time originally specified in the subpoena.

[Rule 5A inserted: Gazette 24 May 2017 p. 2570-1.]

6. Compliance with subpoena

(1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date on which attendance is required.

(2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.

(3) Despite rule 4(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(4) The addressee must comply with a subpoena to produce —

(a) by attending at the date, time and place specified for production or, if the addressee has received notice of a later date or time from the issuing party, at that later date or time and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or

(b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registry at the address specified for the purpose in the subpoena, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production or, if the addressee has received notice of a later date or time from the issuing party, at that later date.

(5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subrule (4) does not discharge the addressee from the obligation to attend to give evidence.

(5A) The addressee cannot comply with the requirement under subrule (4)(b) to deliver or send the subpoena or other document to the Registry by filing it electronically.

(6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.

(7) The copy of a document may be —

(a) a photocopy; or

(b) in an electronic format that the subpoena indicates will be acceptable on a CD-ROM, DVD or USB device, unless the Court, on an application made by a party or the addressee, has directed otherwise.

[Rule 6 inserted: Gazette 21 Feb 2007 p. 542-3; amended: Gazette 28 Jul 2010 p. 3477-8; 24 May 2017 p. 2571 and 2575-6; 16 Aug 2017 p. 4415; 27 Feb 2018 p. 563.]

7. Production otherwise than at a trial

(1) This rule applies if, under a subpoena to produce, the addressee produces a document or thing to the Court otherwise than at a trial.

(2) The Registry must, if requested by the addressee, give a receipt for the document or thing to the addressee.

(3) If the addressee produces more than 1 document or thing, the addressee must provide a list of them.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may at the time of production inform the Registry in writing that any document or copy of a document produced need not be returned and may be destroyed.

[Rule 7 inserted: Gazette 21 Feb 2007 p. 543; amended: Gazette 24 May 2017 p. 2571 and 2575-6.]

8. Setting aside subpoena to attend to give evidence

(1) This rule applies if a subpoena to attend to give evidence has been issued in a proceeding.

(2) On a request by the addressee, a party or any other person with a sufficient interest, the Court may set aside the subpoena or grant other relief in respect of it.

(3) A request under this rule may be made before the date and time for attendance specified in the subpoena.

(4) Subrule (3) does not limit when a request under this rule may be made.

(5) A request under this rule must be made in accordance with rule 8B.

[Rule 8 inserted: Gazette 24 May 2017 p. 2572.]

8A. Setting aside subpoena to produce and directions as to things to be produced

(1) This rule applies if a subpoena to produce has been issued in a proceeding.

(2) On a request by the addressee, a party or any other person with a sufficient interest, the Court may, by order —

(a) set aside the subpoena or part of it; or

(b) make or vary directions in relation to removing from and returning to the Court, and the inspection, copying and disposal, of any document or thing that has been or is to be produced under it; or

(c) grant other relief in respect of it.

(3) A request under this rule may be made before the date and time for production specified in the subpoena.

(4) Subrule (3) does not limit when a request under this rule may be made.

(5) A request under this rule must be made in accordance with rule 8B.

(6) While a request made under this rule is pending, the Registry must not permit any, or any further inspection, copying, removal or disposal of any document or thing to which the request relates.

[Rule 8A inserted: Gazette 24 May 2017 p. 2572-3.]

8B. How requests under r. 8 and 8A to be made

(1) A request under rule 8 or 8A must be made by way of a letter to the Principal Registrar unless —

(a) the request is made orally during a case management conference held under Order 4A, or during a hearing, by a party to the proceeding in which the subpoena has been issued; or

(b) a motion or summons is justified by the circumstances of the particular case or the nature of the request, in which case the request may be made by way of motion or summons; or

(c) the *Supreme Court (Corporations) (WA) Rules 2004* apply to the proceeding in which the subpoena has been issued, in which case the request must be made under those rules.

(2) A request under rule 8 or 8A made by letter must state —

(a) the grounds of the request; and

(b) the order, direction or relief sought.

(3) The person making a request under rule 8 or 8A by letter must —

(a) file it; and

(b) serve a copy of it on the issuing party.

(3A) A request under rule 8 or 8A cannot be filed electronically unless —

(a) the request is made by a party; or

(b) the Principal Registrar has given approval for the request to be filed electronically.

(4) Even if a person has made a request under rule 8 or 8A by letter in accordance with this rule, the Principal Registrar or a case

manager (as defined in Order 4A rule 1) may direct the person to make the request in some other manner.

[Rule 8B inserted: Gazette 24 May 2017 p. 2573-4; amended: Gazette 27 Feb 2018 p. 563.]

9. Inspecting and dealing with documents and things produced otherwise than at a trial

(1) This rule applies if, under a subpoena to produce, the addressee produces a document or thing to the Court otherwise than at a trial.

(2) After the date and time for production specified in the subpoena, a registrar, subject to —

(a) any direction made or relief granted under rule 8A; and

(b) rule 8A(6) and this rule,

may permit any party to the proceeding to inspect, copy or remove any document or thing produced under the subpoena.

(3) A document or thing produced cannot be removed from the Registry except on a written application that is signed by the solicitor for a party and approved by —

(a) a registrar; or

(b) a Court officer authorised in writing for the purposes of this subrule by the Chief Justice.

(4) An application made under subrule (3) may be approved with or without conditions, or refused.

(5) A solicitor who signs an application under subrule (3) and removes a document or thing from the Registry, undertakes to the Court by force of this rule that —

(a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and

(b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by a registrar.

[Rule 9 inserted: Gazette 24 May 2017 p. 2574-5.]

10. Disposal of documents and things produced

(1) Unless the Court otherwise orders, a registrar may, in the registrar's discretion, return to the addressee any document or thing produced in response to the subpoena.

(2) Unless the Court otherwise orders, a registrar must not return any document or thing under subrule (1) unless the registrar has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.

(3) The issuing party must attach, to the front of a subpoena to produce to be served on the addressee, a notice and declaration in accordance with Form 22A.

(4) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena that accompanies the documents produced to the Court under the subpoena.

(5) Unless the Court orders otherwise, a registrar may, at the registrar's discretion, cause to be destroyed a document produced in compliance with a subpoena if —

(a) the document is declared by the addressee to be a copy; and

(b) the registrar has given the issuing party at least 14 days' notice of the intention to destroy the document and that period has expired.

(6) Unless the Court orders otherwise, a registrar must not destroy a document under subrule (5) if the document has become an exhibit in a proceeding and is required in connection with the proceeding, including on any appeal.

[Rule 10 inserted: Gazette 21 Feb 2007 p. 545; amended: Gazette 28 Jul 2010 p. 3478; 24 May 2017 p. 2575 and 2576; 16 Aug 2017 p. 4415.]

11. Costs and expenses of compliance

(1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

(2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.

(3) An amount fixed under this rule is separate from and in addition to —

(a) any conduct money paid to the addressee; and

(b) any witness expenses payable to the addressee.

[Rule 11 inserted: Gazette 21 Feb 2007 p. 545.]

12. Failure to comply with subpoena is contempt of court

(1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

(2) Despite rule 4(1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

[Rule 12 inserted: Gazette 21 Feb 2007 p. 546; amended: Gazette 16 Aug 2017 p. 4415.]

13. Documents and things in custody of court

(1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform a registrar in writing accordingly, identifying the document or thing.

(2) If the document or thing is in the custody of the Court, a registrar must produce the document or thing —

(a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or

(b) as the Court directs.

(3) If the document or thing is in the custody of another court, a registrar must, unless the Court has otherwise ordered —

(a) request the other court to send the document or thing to the registrar; and

(b) after receiving it, produce the document or thing —

(i) in Court or to any person authorised to take evidence in the proceeding as required by the party; or

(ii) as the Court directs.

[Rule 13 inserted: Gazette 21 Feb 2007 p. 546; amended: Gazette 24 May 2017 p. 2575 and 2576.]

Order 37 — Affidavits

1. Title of affidavits

(1) Subject to subrules (2) and (3) every affidavit must be entitled in the cause or matter in which it is sworn and bear the number of the cause or matter.

(2) Where a cause or matter is entitled in more than one matter it is sufficient to state the first matter followed by the words "and other matters".

(3) Where a cause or matter is entitled in a matter or matters and between parties, so much of the title as consists of the matter or matters may be omitted.

(4) An affidavit may be sworn for use in proceedings which are yet to be commenced and must be entitled in the intended cause or matter.

[Rule 1 amended: Gazette 17 Sep 1993 p. 5054; 28 Jun 2011 p. 2552-3.]

2. Form of affidavits

(1) Every affidavit must be expressed in the first person and must state the place of residence and occupation of the deponent, and if he has no occupation his description must be stated. Vague occupations or descriptions must not be used.

(2) If the deponent is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state so.

(3) Every affidavit must be divided into paragraphs numbered consecutively, and each paragraph must be confined, as far as possible to a distinct portion of the subject.

(4) Dates, sums, and other numbers must be expressed in an affidavit in figures and not in words.

[(5) deleted]

(6) Where an affidavit —

(a) consists of more than one page; or

(b) has attachments,

each page of the affidavit and attachments must be numbered consecutively in the upper right hand corner.

(7) If an affidavit has one or more attachments, an index which refers to the affidavit and lists each attachment, its page numbers and a short description of it, must be bound with the affidavit.

(8) Subject to rule 9(1), a document that is to be used in conjunction with an affidavit must be attached to the affidavit and be referred to in the affidavit as being attached.

(9) Subject to rule 9(1), attachments to an affidavit must be bound with it in one or more volumes as may be necessary.

(9A) If 1 or more volumes of an affidavit and its attachments are filed electronically, subrule (9) does not require them to be bound.

(10) Except in a case where the Court allows otherwise, the thickness of a volume of an affidavit and its attachments, if not filed electronically, must not exceed 40 mm.

(11) ~~Except in a case where the Court allows otherwise, a volume of an~~An affidavit and its attachments~~, if~~ may be filed electronically~~, must not exceed 250 pages~~ if the size of each electronic file to be filed is less than 200 megabytes.

[Rule 2 amended: Gazette 16 Nov 1990 p. 5698-9; 23 Jan 2001 p. 562; 21 Feb 2007 p. 550; 27 Feb 2018 p. 563-4; SL 2024/38 r. 14.]

3. Affidavits by 2 or more deponents

In every affidavit made by 2 or more deponents the names of the persons making the affidavit must be inserted in the jurat,

except that, if the affidavit of all the deponents is taken at one time by the same person it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

*[**4, 4A.** Deleted: Gazette 21 Feb 2007 p. 550.]*

5. Irregularity

(1) Unless the Court otherwise orders, an affidavit may be filed notwithstanding any irregularity in the form thereof.

(2) An affidavit may, with the leave of the Court be used in evidence notwithstanding any irregularity in the form thereof.

6. Contents of affidavits

(1) An affidavit must be confined to such facts as the deponent is able of his or her own knowledge to prove.

(2) Despite subrule (1), an affidavit may contain statements of information or belief if —

(a) the affidavit is made under, and for the purposes of proceedings under, a written law that permits it to contain such statements; or

(b) the affidavit is made under a provision of these rules that permits it to contain such statements; or

(c) the affidavit is made for the purposes of interlocutory proceedings; or

(d) the Court has made an order permitting the affidavit to contain such statements.

(3A) An affidavit containing statements of information or belief must set out the sources or grounds of that information or belief unless —

(a) the affidavit is made under, and for the purposes of proceedings under, a written law that —

(i) prevents the deponent from disclosing those sources or grounds or information material to them; or

(ii) does not permit those sources or grounds or information material to them to be made public;

or

(b) the Court has made an order permitting the affidavit to omit the sources or grounds.

(3) The costs of an affidavit which unnecessarily sets forth matters of hearsay, argumentative matter or copies of or extracts from documents, shall be paid by the party filing the affidavit.

[Rule 6 amended: Gazette 5 Jun 1992 p. 2281; 26 Aug 1994 p. 4415; 13 Sep 1996 p. 4568; 28 Oct 1996 p. 5698; 16 Jul 1999 p. 3189; 28 Jul 2010 p. 3482-3.]

7. Scandalous matter

The Court may order to be struck out from an affidavit any matter which is scandalous, irrelevant or otherwise oppressive, or may order that the affidavit containing such matter be taken off the file.

*[**8.** Deleted: Gazette 21 Feb 2007 p. 550.]*

9. Exhibits

(1) A bound register, an account book or other book or any document of an unusual size must not be attached to the affidavit or referred to therein as being attached, but must be referred to as an exhibit.

(2) An exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn or taken, and the certificate must have indorsed on it the short title of the cause or matter and its number, if any.

(3) An exhibit to an affidavit cannot be filed electronically.

[Rule 9 amended: Gazette 16 Nov 1990 p. 5699; 21 Feb 2007 p. 551; 27 Feb 2018 p. 564.]

*[**10-12.** Deleted: Gazette 21 Feb 2007 p. 551.]*

13. Affidavits to be filed

(1) Every affidavit must be filed before it is used unless otherwise directed by the Court.

(2) There must be indorsed on every affidavit a note stating the name of the deponent, the dates of swearing and filing and on whose behalf it is filed.

14. Affidavits not to be filed out of time without leave

Where a special time is limited for filing affidavits, an affidavit filed after that time shall not be used except by leave of the Court.

15. Alterations in accounts

Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the person before whom the affidavit is sworn, and such alterations shall not be made by erasure.

[Rule 15 amended: Gazette 21 Feb 2007 p. 551.]

16. This Order additional to *Oaths, Affidavits and Statutory Declarations Act 2005*

This Order is in addition to the *Oaths, Affidavits and Statutory Declarations Act 2005*.

[Rule 16 inserted: Gazette 21 Feb 2007 p. 551.]

Order 38 — Evidence by deposition

1. Power to order depositions to be taken

(1) The Court may in any cause or matter, if it appears necessary for the purposes of justice, make an order in Form No. 25 for the examination of any witness or person upon oath before a judge, or an officer of the Court, or any other person, at any place in the State.

(2) An order under subrule (1) may be made on such terms as the Court thinks fit.

(3) The Court may give directions as to the procedure to be followed in and in relation to the examination.

[Rule 1 amended: Gazette 8 Feb 1991 p. 582; 28 Jun 2011 p. 2552.]

*[**2, 3.** Deleted: Gazette 8 Feb 1991 p. 582.]*

4. Enforcing attendance of witness

(1) In this rule and in rules 5 to 17 the judge, officer of the Court, or person before whom the examination of any person pursuant to an order under rule 1 takes place, is referred to as the ***examiner***.

(2) When an order has been made under rule 1 —

(a) for the examination of any person before the examiner; or

(b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by subpoena in like manner as his attendance, or the production by him of a document at a trial may be enforced.

[Rule 4 amended: Gazette 21 Feb 2007 p. 551.]

5. Refusal of witness to attend or be sworn

(1) If any person duly summoned by subpoena to attend before the examiner refuses or fails to attend, or refuses to be sworn for the purpose of the examination, or to answer any lawful question or produce any document therein, a certificate of such refusal or failure signed by the examiner must be filed, and upon the filing of the certificate the party requiring the attendance of the witness may apply to the Court *ex parte* for any order requiring the witness to attend, be sworn, or answer any question or produce any document, as the case may be.

(2) The Court may order any person against whom an order is made under this rule to pay any costs occasioned by his refusal or failure.

(3) Any person wilfully disobeying any order made against him under subrule (1) is guilty of contempt of court.

[Rule 5 amended: Gazette 28 Jun 2011 p. 2552.]

6. Time and place of examination, notice of

(1) On production to him of the order for examination or a duplicate thereof, the examiner must give to the party who obtained the order a notice in writing appointing the time and place at which, subject to any application by the parties, the examination shall be taken.

(2) In fixing the time appointed under subrule (1) the examiner shall have regard to the reasonable convenience of the persons to be examined and all the circumstances of the case, but subject thereto such time shall be as soon as practicable after the making of the order.

[Rule 6 amended: Gazette 28 Jun 2011 p. 2552.]

7. Documents to be given to examiner

(1) The party who obtained the order for examination before an examiner must supply to the examiner copies of all such

documents in the cause or matter as are necessary to inform the examiner of the questions at issue between the parties.

(2) The party must supply the copies in the format, or by the means, required by the examiner.

[Rule 7 amended: Gazette 27 Feb 2018 p. 564.]

8. Practice on examination

(1) Subject to any direction contained in the order for examination, the person examined before the examiner may be cross-examined and re-examined and the practice with reference to the examination, cross-examination and re-examination of witnesses at the trial of a cause or matter shall extend and be applicable to the evidence of any person so examined.

(2) The examiner may put questions to any person examined before him as to the meaning of any answer made by that person, or as to any matter arising in the course of the examination.

(3) The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, or such of them as choose to attend.

(4) The examiner may, if necessary, adjourn the examination from time to time or from place to place.

9. Expenses of witnesses

Any person required to attend for the purpose of being examined or of producing any document before the examiner shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

10. Additional witnesses may be examined with parties' consent

The examiner may, with the consent in writing of all parties, take the examination of any witnesses or persons in addition to those named or provided for in the order, and shall annex such consent to the original depositions.

11. How depositions to be taken

(1) The deposition of any person examined before the examiner must —

(a) be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner; or

(b) be recorded in the presence of the examiner on tape or by other mechanical means.

(2) Subject to subrule (3) a deposition taken pursuant to subrule (1)(a) need not set out every question and answer, but must contain as nearly as may be the statement of the person examined.

(3) The examiner may direct that the exact words of any question and answer thereto be set out in the deposition.

(4) A deposition taken pursuant to subrule (1)(a) must be read to the person examined and, if any party so requests, the person examined must be asked to sign his deposition.

(5) The examiner must authenticate the deposition by his signature.

(6) Where the deposition is taken pursuant to subrule (1)(b) it must be transcribed under the supervision of the examiner who must authenticate the transcript by his signature.

(7) The transcript authenticated by the examiner constitutes the deposition of the person examined, and it is not necessary that the deposition be read to or signed by him.

(8) The examiner must indorse on the deposition a note signed by him of the time occupied in taking the examination and the fees received by him in respect thereof.

(9) The deposition authenticated by the examiner shall be filed by the examiner.

(10) Unless the Principal Registrar has given approval for it to be filed electronically, the deposition cannot be filed electronically by the examiner.

[Rule 11 amended: Gazette 28 Jun 2011 p. 2552; 27 Feb 2018 p. 564-5.]

12. Objection to questions

(1) When any person being examined before an examiner objects to answer any question, or objection is taken to any question put to him, that question, the ground for objection, and the answer (if any) to the question objected to, must be set out in the deposition of the person being examined or in a statement annexed to the deposition.

(2) The Court shall decide the validity of the ground for the objection.

(3) If the Court decides against the objector it may order him to pay the costs occasioned by the objection.

13. Examiner may give Court special report

The examiner may make a special report to the Court touching any examination taken before him, and with regard to the absence or conduct of any person thereat, and the Court may direct such proceedings to be taken or make such order, on the report as it thinks fit.

14. Oaths

Any officer of the Court or other person directed or authorised to take the examination of any witness or person may administer oaths.

[Rule 14 amended: Gazette 8 Feb 1991 p. 582.]

15. Perpetuating testimony

(1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for that purpose.

(2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

(3) No action to perpetuate the testimony of witnesses shall be set down for trial.

16. Examiner's fees

(1) An examiner is entitled to charge the fees set forth in the following table —

Table of examiner's fee

		$
(a)	Upon giving an appointment to take an examination	21.00
(b)	for the examination —	
	for the first hour	28.00
	for every hour after the first	17.00

(2) The party prosecuting the order or his solicitor shall also pay all reasonable travelling and other expenses including charges for the room (other than the examiner's office) where the examination is taken and an allowance of $17 an hour for the time occupied by the examiner in travelling.

(3) The fee on appointment may be retained by the examiner whether the examination is taken or not.

(4) The other fees and the travelling or other expenses shall be paid as soon as the examination has been concluded.

(5) A judge or a master may authorise the charging of fees at a higher hourly rate than the hourly rate specified in the Table to subrule (1).

(6) If any dispute arises as to the amount of fees or expenses payable under this rule it shall be referred to a master for his decision which shall be final.

[Rule 16 inserted: Gazette 21 Mar 1980 p. 960-1; amended: Gazette 30 Nov 1984 p. 3951-3; 28 Jun 2011 p. 2554.]

17. Payment of examiner's fees

(1) An examiner shall not be required to file any deposition until all fees and expenses due to him in respect of that deposition have been paid.

(2) The Court may, on the application of an examiner, order the payment to him by the party prosecuting the order of the fees and expenses payable to him on account of any examination, but without prejudice to any question on the taxation of costs as to the party by whom the costs of such examination should eventually be borne.

[Rule 17 amended: Gazette 27 Feb 2018 p. 565.]

*[**18.** Deleted: Gazette 21 Feb 2007 p. 551.]*

Order 38A — Examination of witnesses outside the State

[Heading inserted: Gazette 8 Feb 1991 p. 582; amended: Gazette 22 Feb 2008 p. 637.]

1. Terms used

In this Order —

(a) the ***Act*** means the *Evidence Act 1906*; and

(b) words and expressions have the same definitions as in section 109 of the Act.

[Rule 1 inserted: Gazette 8 Feb 1991 p. 582.]

2. Order applies to Act s. 110 and 111

This Order applies to applications made under section 110 or 111 of the Act.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 551.]

3. Applications under Act s. 110 and 111 in civil proceedings

(1) An application under section 110 of the Act in relation to civil proceedings before the Court must be made by summons supported by an affidavit.

(2) An application under section 111 of the Act in relation to civil proceedings before an inferior court must be made by originating summons supported by an affidavit.

(3) The affidavit in support of an application must —

(a) address the matters referred to in section 110(2) of the Act; and

(b) exhibit all such documents in the proceedings as are necessary to inform the Court of the questions at issue between the parties.

(4) Where the application is for an order for the issue of a letter of request the affidavit must exhibit a draft of the letter (in Form No. 28) and, if the language of the country outside the State is not English, a translation of the letter into the language of the country together with a certificate by the translator stating his name, address and qualifications for making the translation and stating that the translation is correct.

[Rule 3 inserted: Gazette 8 Feb 1991 p. 583.]

4. Application under Act s. 110 and 111 in criminal proceedings

(1) Criminal proceedings are to be taken as being before the Court for the purposes of section 110(1) of the Act where a person has been committed to take his trial before the Court.

(2) An application under section 110 of the Act in relation to criminal proceedings before the Court must be made by motion supported by an affidavit.

(3) An application under section 111 of the Act in relation to criminal proceedings before an inferior court must be made by originating summons supported by an affidavit which must exhibit the complaint in the inferior court.

(4) Rules 3(3) and 3(4) apply to applications under this rule.

[Rule 4 inserted: Gazette 8 Feb 1991 p. 583.]

5. Orders under Act s. 110 and 111

An order under section 110 or 111 of the Act —

(a) may require the filing of an undertaking by any party (in Form No. 29) as to the costs of examining or taking the evidence of the person outside the State; and

(b) must be in Form No. 26 or in such form as the Court may approve.

[Rule 5 inserted: Gazette 8 Feb 1991 p. 583.]

6. Manner of examination

In the absence of specific directions in an order made under section 110 or 111 of the Act as to the procedure to be followed in and in relation to the examination, Order 38 rules 6, 8, 11, 12, 13 and 14 apply.

[Rule 6 inserted: Gazette 8 Feb 1991 p. 583.]

7. Examiner's remuneration

In the absence of specific directions in an order made under section 110 or 111 of the Act as to the remuneration of the examiner, Order 38 rules 16 and 17 apply.

[Rule 7 inserted: Gazette 8 Feb 1991 p. 583.]

Order 39 — Taking of evidence for foreign and Australian courts

[Heading inserted: Gazette 8 Feb 1991 p. 586; amended: Gazette 22 Feb 2008 p. 637.]

1. Terms used

In this Order —

(a) the ***Act*** means the *Evidence Act 1906*; and

(b) words and expressions have the same definitions as in section 115 of the Act.

[Rule 1 inserted: Gazette 8 Feb 1991 p. 586.]

2. Applications under Act s. 116

(1) An application under section 116 of the Act may be made by the person nominated for that purpose by the requesting court, or, if no person is so nominated, by the Attorney General.

(2) The application must be made *ex parte* and must be supported by an affidavit that exhibits the request and, where the request is not in English, a translation into English.

(3) When an application has been made under section 116 of the Act any application for a further order or direction in relation to the same matter must be made by summons.

(4) An application, affidavit or summons referred to in this rule cannot be filed electronically.

[Rule 2 inserted: Gazette 8 Feb 1991 p. 586; amended: Gazette 27 Feb 2018 p. 565.]

3. Orders under Act s. 117

(1) An order made under section 117 of the Act must be in Form No. 30 or in such form as the Court may approve and —

(a) may order any fit and proper person nominated by the applicant, or any officer of the Court, or such other

qualified person as to the Court seems fit, to obtain the evidence;

(b) may give such directions about the manner of obtaining the evidence as the Court thinks fit, including directions that the evidence be obtained —

(i) in the manner specified in the request; or

(ii) in accordance with the practice of the requesting court; or

(iii) in the manner requested by the applicant;

(c) may give such directions as the Court thinks fit about the transmission of the evidence obtained.

(2) In the absence of any special directions in the order, the examination of a witness must be taken in the manner prescribed by Order 38 rule 11(1) to (8).

[Rule 3 inserted: Gazette 8 Feb 1991 p. 586.]

4. Examiner's remuneration

Order 38 rule 17 applies mutatis mutandis in the case of an examination under this Order and the Court may make an order thereunder for the fees and expenses due to a person who obtains evidence pursuant to an order made under section 117 of the Act.

[Rule 4 inserted: Gazette 8 Feb 1991 p. 586; amended: Gazette 26 Aug 1994 p. 4415.]

4A. Examiner's power to administer oaths

A person appointed to obtain evidence may administer oaths.

[Rule 4A inserted: Gazette 8 Feb 1991 p. 586.]

5. Transmission of depositions

(1) Unless the order for examination of a witness otherwise directs, the examiner before whom the examination is taken must send the deposition of the witness to the Principal Registrar.

(1A) The deposition cannot be filed electronically by the examiner.

(2) On receiving a deposition taken under this Order the Principal Registrar shall give a certificate in Form No. 31 sealed with the seal of the Court annexing thereto and identifying the request, the order for examination, and the deposition.

(3) The Principal Registrar shall send the certificate referred to in subrule (2) with the documents annexed thereto to the Attorney General for transmission direct to the requesting court: provided that if the request was sent direct to the Principal Registrar by some other person pursuant to the provisions of a Convention, the Principal Registrar shall send the certificate and annexures to that person for transmission to the requesting court.

[Rule 5 amended: Gazette 14 Dec 1979 p. 3870; 8 Feb 1991 p. 586-7; 28 Jun 2011 p. 2552; 27 Feb 2018 p. 565.]

6. Procedure where witness claims privilege

(1) This rule applies where a person claims to be exempt from giving evidence under section 118(1)(b) of the Act and the claim is not supported or conceded as mentioned in section 118(2) of the Act.

(2) The examiner may require the person to give the evidence to which the claim relates and, if the examiner does not do so, the Court may do so on the *ex parte* application of the applicant who obtained the order under section 117 of the Act.

(3) If the evidence is taken —

(a) it must be contained in a document separate from the remainder of the deposition of the person;

(b) the examiner shall send to the Principal Registrar with the deposition and the document, a statement signed by the examiner setting out the claim and the ground on which it is made;

(c) the Principal Registrar shall not send the document to the requesting court but shall send the items mentioned in rule 5, the statement and a request that it determine the claim;

(d) the Principal Registrar shall —

(i) if the requesting court dismisses the claim, send it the document; or

(ii) if the requesting court upholds the claim, send the document to the person,

and notify the person of the requesting court's determination.

(4) The deposition and document referred to in subrule (3)(b) cannot be filed electronically by the examiner.

[Rule 6 inserted: Gazette 8 Feb 1991 p. 587; amended: Gazette 27 Feb 2018 p. 565.]

Order 39A — *Trans-Tasman Proceedings Act 2010* (Commonwealth) rules

[Heading inserted: Gazette 3 Aug 2012 p. 3749.]

Division 1 — General

[Heading inserted: Gazette 3 Aug 2012 p. 3749.]

1. Term used: Act

(1) In this Order, unless the contrary intention appears —

Act means the *Trans-Tasman Proceedings Act 2010* (Commonwealth).

(2) Unless the contrary intention appears, an expression used in this Order and in the Act has the same meaning as in the Act.

[Rule 1 inserted: Gazette 16 Jul 1999 p. 3189; amended: Gazette 3 Aug 2012 p. 3749.]

2. Application of this Order

(1) This Order applies to proceedings and NZ judgments to which the Act applies.

(2) Subject to this Order, unless the contrary intention appears, these rules apply to proceedings and NZ judgments referred to in this Order.

[Rule 2 inserted: Gazette 16 Jul 1999 p. 3190; amended: Gazette 3 Aug 2012 p. 3749.]

Division 2 — Subpoenas to be served in New Zealand

[Heading inserted: Gazette 3 Aug 2012 p. 3750.]

2A. Form of subpoenas

If it is to be served in New Zealand —

(a) a subpoena to attend to give evidence must be in the form of Form 23;

(b) a subpoena to produce the subpoena and a document or thing must be in the form of Form 23A;

(c) a subpoena both to attend to give evidence and to produce the subpoena and a document or thing must be in the form of Form 23B.

[Rule 2A inserted: Gazette 24 May 2017 p. 2576.]

3. Leave to serve subpoena (Act s. 31)

(1) For the purposes of section 31 of the Act, leave to serve a subpoena in New Zealand must be sought by filing —

(a) if the subpoena was issued by the Court, a motion in that proceeding; or

(b) if the subpoena was issued by an inferior court, an originating motion to be heard *ex parte*.

(2) The motion must be supported by an affidavit annexing a copy of the subpoena and setting out —

(a) the name, designation or occupation, and address of the person named and whether that person is over 18 years of age; and

(b) the nature and significance of the evidence required from the person named, or of the document or thing required to be produced by the person; and

(c) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the person named; and

(d) the date by which it is intended to serve the subpoena; and

(e) details of —

(i) the calculation of the sum sufficient to meet reasonable expenses in complying with the subpoena; and

(ii) how those expenses are to be paid, or tendered, to the person named, in money or in vouchers;

and

(f) where the subpoena requires the person named to give evidence, an estimate of the time that the person will be required to attend to give evidence; and

(g) details of any facts or matters known to the deponent which may provide cause for the subpoena to be set aside under section 36 of the Act.

[(3) deleted]

(4) No document relating to an application under this rule is to be searched, inspected or copied without leave of a judge.

[Rule 3 inserted: Gazette 16 Jul 1999 p. 3190-1; amended: Gazette 3 Aug 2012 p. 3750.]

4. Setting aside subpoena (Act s. 35 and 36)

(1) An application to the Court under section 35(1) of the Act must be made by filing an application in the form of Form No. 31A.

(2) The application must be supported by an affidavit setting out the facts and grounds on which the application is based.

(3) The filed application must be headed with the heading on the order of the Court granting leave to serve the subpoena.

(4) In addition to the requirements of section 35(3) of the Act, the application must contain the applicant's telephone number.

[(5) deleted]

(6) For the purposes of section 35(4) of the Act, the Principal Registrar must serve the copy of the application, and any accompanying affidavit, in accordance with Order 72 rule 6.

(7) An application made under this rule is to be determined at a date, time and place and in a manner directed by the Court.

(8) A request made under section 36(5) of the Act must be made by filing a notice in the form of Form No. 31B not later than 7 days after —

(a) if the request is made by the person named in the subpoena, the date on which the application was filed; or

(b) otherwise, the date on which the application is served on the party who obtained leave to serve the subpoena.

(9) A request made under section 36(6)(b) of the Act that is not made in the application must be made by filing a request in the form of Form No. 31C.

[Rule 4 inserted: Gazette 16 Jul 1999 p. 3191-2; amended: Gazette 3 Aug 2012 p. 3750-1; 27 Feb 2018 p. 566.]

5. Failure to comply with subpoena (Act s. 38)

(1A) In this rule —

certificate means a certificate referred to in section 38 of the Act.

(1) A certificate may be issued on the motion of the court out of which the subpoena was issued or on the application of a party.

(2) Application for the issue of a certificate may be made —

(a) if the proceeding in which the certificate is brought is then before the court, orally, accompanied by a draft certificate in the form of Form No. 31D; or

(b) by motion.

(3) An application made by motion for the issue of a certificate must be supported by —

(a) an affidavit of service of —

(i) the subpoena; and

(ii) the order giving leave for the subpoena to be served in New Zealand; and

(iii) the notice referred to in section 32(2) of the Act; and

(b) an affidavit stating —

[(i) deleted]

(ii) whether application was made to set aside the subpoena and, if so, particulars of the application and any orders made; and

(iii) that the subpoena was not complied with.

(4) It is not necessary to attach the documents referred to in subrule (3)(a) to the affidavit of service.

(5) A certificate must be in the form of Form No. 31D.

[Rule 5 inserted: Gazette 16 Jul 1999 p. 3192; amended: Gazette 3 Aug 2012 p. 3751.]

Division 3 — Remote appearances from New Zealand

[Heading inserted: Gazette 3 Aug 2012 p. 3752.]

6A. Appearances by audio link or audiovisual link (Act s. 48)

(1) An application for leave under section 48(1) of the Act may be made orally or by summons.

(2) The application must be supported by an affidavit stating the following —

(a) the reasons why the applicant or the applicant's lawyer can more conveniently participate in the hearing from New Zealand;

(b) which audio link or audiovisual link facilities are available for the hearing or can reasonably be made available;

(c) that the requirements of section 51 or 52, as the case requires, of the Act can be met;

(d) if leave is sought for the applicant's lawyer to appear before the Court, and the lawyer is not entitled to appear before the Court —

(i) that the lawyer is a qualified NZ lawyer; and

(ii) the applicant ordinarily resides or, if the applicant is not an individual, has its principal place of business, in New Zealand.

[Rule 6A inserted: Gazette 3 Aug 2012 p. 3752.]

6. Evidence by audio link or audiovisual link (Act s. 50)

(1) An application for leave under section 50(1) of the Act may be made orally or by summons.

(2) The application must be supported by an affidavit stating —

(a) the reasons why such a procedure is desirable; and

(b) the nature of the evidence to be taken; and

(c) the number of witnesses to be examined; and

(d) the expected duration of the evidence; and

(e) whether issues of character are likely to be raised; and

(f) in the case of submissions, the expected duration of the submissions; and

(g) the audio link or audiovisual link facilities available for such a procedure or that can reasonably be made available; and

(h) that the requirements of section 51 or 52, as the case requires, of the Act can be met.

(3) In deciding whether to grant leave, the Court may take account of the matters set out in the applicant's affidavit in addition to any other matters considered to be material, including cost and convenience to witnesses and all parties.

(4) If the Court determines that it is appropriate to hear evidence or receive submissions by audio link or audiovisual link, the Court

may direct the Principal Registrar to arrange and coordinate the appropriate facilities in Australia and New Zealand.

(5) Without limiting the generality of subrule (4), the Court may direct that —

(a) the Principal Registrar arrange for the evidence to be given, or the submissions to be made, at the High Court of New Zealand or at another place approved by the High Court of New Zealand; or

(b) an officer of the High Court of New Zealand, or another person approved by the Court, be requested to be present to assist in the transmission of the evidence or submissions, and, in particular to —

(i) introduce witnesses to be called and legal representatives; and

(ii) assist with the administration of oaths, if necessary; and

(iii) assist with the implementation of any directions or requests given or made by the judge or other person presiding in the proceeding.

[Rule 6 inserted: Gazette 16 Jul 1999 p. 3192-3; amended: Gazette 3 Aug 2012 p. 3752-3.]

Division 4 — Registration and enforcement of NZ judgments

[Heading inserted: Gazette 3 Aug 2012 p. 3753.]

7. Setting aside registration of NZ judgment (Act s. 72)

(1) An application under section 72(2) of the Act must be made by filing a notice of originating motion in the form of Form No. 64.

(2) The application must be supported by an affidavit setting out the facts and grounds on which the application is made.

(3) The notice of originating motion and the accompanying affidavit must be served on the entitled person not less than

7 clear days before the day named in the notice for hearing the motion.

[Rule 7 inserted: Gazette 3 Aug 2012 p. 3753.]

8. Stay of enforcement of registered NZ judgment (Act s. 76)

(1) An application under section 76(3) of the Act must be made by filing a notice of originating motion in the form of Form No. 64.

(2) The application must be supported by an affidavit setting out the facts and grounds on which the application is made.

(3) The notice of originating motion and the accompanying affidavit must be served on the entitled person not less than 7 clear days before the day named in the notice for hearing the motion.

[Rule 8 inserted: Gazette 3 Aug 2012 p. 3753.]

Order 40 — Court experts

1. Terms used

In this Order unless the contrary intention appears —

Court expert means an independent expert appointed under rule 2 to inquire into and report upon a question of fact or opinion;

expert in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on that question would be admissible in evidence.

2. Court expert, appointment of etc.

(1) In any cause or matter which is to be tried without a jury and which involves a question for an expert witness the Court may at any time —

(a) on the application of any party, on terms, appoint an independent expert, or if more than one such question arises, 2 or more such experts to inquire into and report upon any question of fact or opinion not involving questions of law or of construction; and

(b) direct a Court expert to make a further or supplemental report or inquiry and report; and

(c) give such instructions in relation to the inquiry and report of a Court expert as the Court thinks fit.

(2) Instructions pursuant to subrule (1)(c) may make provision concerning any experiment or test necessary to enable the Court expert to make a satisfactory report.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2552.]

3. Report of Court expert

(1) The Court expert must file the expert's report with such copies thereof as the Court requires and the proper officer must send a copy of the report to each party or his solicitor.

(1A) Unless the Principal Registrar has given approval for it to be filed electronically, the Court expert's report cannot be filed electronically.

(2) Any part of a Court expert's report which is not accepted by all parties shall be treated as information furnished to the Court, and shall be given such weight as the Court thinks fit.

[Rule 3 amended: Gazette 27 Feb 2018 p. 566.]

4. Cross-examination of Court expert

Upon the application of any party made within 14 days after receiving a copy of the Court expert's report, the Court shall make an order for the cross-examination of the Court expert by all parties either —

(a) before the Court at the trial or at some other time; or

(b) before an examiner at such time and place as the Court directs.

5. Remuneration of Court expert

(1) The remuneration of the Court expert shall be fixed by the Court and shall include —

(a) a fee for making the report and a fee for making any supplementary report; and

(b) a proper sum for each day during which his presence is required either in Court or before an examiner.

(2) The parties shall be jointly and severally liable to pay the Court expert's remuneration, without prejudice to the question by whom it shall be paid as part of the costs of the cause or matter.

(3) Where any party opposes the appointment of a Court expert, the Court may, as a condition of making the appointment require the party seeking the appointment to give such security for the Court expert's remuneration as the Court thinks fit.

6. Further expert witnesses

(1) Where a Court expert has made a report pursuant to this Order on any question, any party who gives to the other interested parties a reasonable time before the trial or hearing, notice of his intention to do so, may call one other expert witness to give evidence on the question reported on by the Court expert.

(2) Except as provided by subrule (1) no other expert witness shall be called by any party without the leave of the Court, and such leave shall not be granted unless the Court considers the circumstances of the case to be exceptional.

[Rule 6 amended: Gazette 28 Jun 2011 p. 2552.]

Order 41 — Motion for judgment

1. Judgment to be on motion

Except where by any Act, or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the Court must be obtained by motion for judgment.

2. When motion for judgment may be set down after trial etc.

(1) Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined.

(2) If the plaintiff does not set down such a motion, and give notice thereof to the other parties within 7 days after his right so to do has arisen, then after the expiration of such 7 days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

3. Motion for judgment before trial etc. of all issues

(1) Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court for leave to set down a motion for judgment, without waiting for such trial or determination.

(2) The Court may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

4. Motion for judgment to be set down within one year

A motion for judgment shall not, except by leave of the Court, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

5. Court may draw inferences and determine questions

Upon motions for judgment the Court may draw all inferences of fact, not inconsistent with the finding of the jury, if the trial was with a jury, and if satisfied that it has before it all the material necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it is of opinion that it has not sufficient material before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it thinks fit.

Order 42 — Entry of judgment

1. Mode and form of entry

(1) Every judgment shall be entered by the Principal Registrar in the book to be kept for that purpose in the Central Office.

(1A) The book must be kept in the manner directed by the Chief Justice from time to time.

(2) If a form of judgment is prescribed in Schedule 2 the judgment must be in that form.

(3) The party entering a judgment shall be entitled to have recited therein a statement of the manner and place in and at which the service of the writ or other originating process by which the cause or matter was begun, was effected.

[Rule 1 amended: Gazette 14 Dec 1979 p. 3870; 28 Jun 2011 p. 2554; 27 Feb 2018 p. 566.]

2. Date from which judgment or order takes effect

(1) A judgment or order of the Court takes effect from the day of its date.

(2) Such judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders that it be dated as of some earlier or later day, in which case it shall be dated as of that other day.

3. Orders to do an act, time for obeying to be specified

Every judgment or order requiring any person to do any act, other than the payment of money, shall state the time, or the time after service of the judgment or order, within which the act is to be done.

4. Entering judgment on filing of affidavit etc.

Where under the Act or these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the proper officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly.

5. Entering judgment pursuant to order etc.

Where by the Act or these rules, or otherwise, any judgment may be entered pursuant to any order or certificate or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the proper officer to enter judgment accordingly.

6. Entering judgment on certificate of master or registrar

Where reference is made to a master or a registrar to ascertain the amount for which final judgment is to be entered, the certificate of the master or registrar shall be filed when judgment is entered.

[Rule 6 amended: Gazette 14 Dec 1979 p. 3870; 30 Nov 1984 p. 3951; 27 Feb 2018 p. 566.]

7. Entering judgment by consent when party appears by solicitor

In any cause or matter where the defendant has appeared by a solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by the defendant's solicitor.

[Rule 7 amended: Gazette 27 Feb 2018 p. 567.]

8. Entering judgment by consent where defendant has not appeared or is self-represented

Where the defendant has not appeared or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, or solicitor.

9. Satisfaction of judgments

(1) A memorandum of satisfaction of a judgment may be entered upon a consent to the entry being filed.

(2) The consent to the entry must be signed by the party entitled to the benefit of the judgment and must be attested, and verified by the affidavit of the attesting witness.

(3) If the attesting witness is not a barrister or solicitor the entry must not be filed without the leave of a master, which leave may be indorsed on the affidavit.

[Rule 9 amended: Gazette 30 Nov 1984 p. 3951; 27 Feb 2018 p. 567.]

Order 43 — Drawing up judgments and orders

1. Drawing up etc. judgments etc.

(1) Subject to these rules and to any order of the Court all judgments or orders whether given or made in Court or in chambers or by default, shall be drawn up under the direction of the registrar or other officer to whom such duty may be assigned.

(2) A party having the carriage of the judgment or order shall have the first option to enter or extract it, but any other party affected may do so if such first-mentioned party fails to take steps within 3 days from the making thereof to have the judgment or order approved, or having taken such steps does not in the opinion of the registrar diligently proceed to have the judgment or order approved and entered or extracted.

[Rule 1 amended: Gazette 14 Dec 1979 p. 3870.]

2. When order need not be drawn up

(1) An order which neither imposes any special terms nor includes any special directions other than a direction as to costs, but only —

(a) extends the period within which a person is required or authorised by these rules, or by any judgment, order or direction, to do any act; or

(b) gives leave to do any of the acts mentioned in subrule (2),

need not be drawn up unless the Court otherwise directs.

(2) The acts referred to in subrule (1)(b) are —

(a) the issue of any writ, other than a writ of summons for service out of Australia, or a writ of attachment;

(b) the amendment of a writ of summons or other originating process or pleading;

(c) the filing of a document or the taking of a document off the file;

(d) any act to be done by an officer of the Court other than a solicitor;

(e) the correction of a clerical mistake or error appearing in a judgment or order.

(3) When under subrule (1) it is not necessary to draw up an order —

(a) the person or solicitor of the person on whose application the order is made shall forthwith give notice in writing of the order to the person, if any, who, if this rule had not been made, would have been required to be served with the order; and

(b) a note or memorandum of such order signed by a judge or a master or registrar shall be sufficient authority for the extension of time, issue, amendment, filing or other act.

[Rule 2 amended: Gazette 30 Nov 1984 p. 3951; 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2451.]

3. Authentication of judgments and orders

(1) Every judgment or order shall be marked to show by whom it was made.

(2) An order is sufficiently authenticated if signed by the registrar and sealed with a seal of the Court.

4. Judgments and orders to be court record; issue and use of duplicates

(1) Every judgment and order shall be kept by the Court as a record in the manner directed by the Chief Justice from time to time.

(2) A duplicate of an order shall, on the day it has been entered, be sealed without fee and delivered to the party extracting the order.

(3) When a rule or Order or the practice of the Court requires the production of an order, it is sufficient to produce the duplicate.

(4) A further duplicate may be issued at any time, with the sanction of the registrar, and on payment of the prescribed fee, on the registrar being satisfied of the loss of the duplicate, or that there is other sufficient reason for the issue of a further duplicate, and that the person applying is properly entitled to it.

(5) If an order is issued by means of the ECMS —

(a) an authorised user may print from the ECMS 1 or more copies of the order; and

(b) a printed copy may be treated as a duplicate of the order for the purposes of this rule.

[Rule 4 amended: Gazette 1 Aug 1980 p. 2558; 27 Feb 2018 p. 567; 31 Dec 2019 p. 4677.]

5. Amending orders

(1) An order shall not be amended except on production of the duplicate or the duplicate last issued, which shall, after the original order has been amended and under the direction of the registrar, be amended in accordance with the amendment of the original order. The amendment in the duplicate shall be sealed under the direction of the registrar.

(2) The registrar may dispense with the requirement under subrule (1) to produce the duplicate or the duplicate last issued, subject to any conditions the registrar considers appropriate.

[Rule 5 amended: Gazette 27 Feb 2018 p. 567-8.]

6. Draft judgment or order to be filed

(1) The party bespeaking a judgment or order shall file a draft of the judgment or order unless the registrar dispenses with the draft and permits filing of the engrossment in the first instance, and, if so required by the registrar, the party shall leave with the registrar his counsel's brief and any other documents which the

registrar may require for the purpose of drawing up, or settling such judgment or order.

(2) If the judgment or order is not bespoken and the draft and any documents required by the registrar filed within 7 days after the judgment or order is finally pronounced or disposed of by the Court, the registrar may decline to settle or pass the judgment or order without the leave of the Court.

[Rule 6 amended: Gazette 14 Dec 1979 p. 3870; 27 Feb 2018 p. 568.]

7. Appointment to settle draft

(1) When the registrar is of the opinion that any judgment or order should be settled in the presence of the parties, he shall appoint a time and place for settling the same, and notify the party bespeaking the judgment or order thereof.

(2) Such party shall not less than 2 clear days before the time so appointed, serve notice of the appointment, together with a copy of the draft judgment or order on every other party on the record.

[Rule 7 amended: Gazette 14 Dec 1979 p. 3870.]

8. Attendance on settling draft

(1) The party bespeaking the judgment or order and all parties served with notice under rule 7 shall attend on the settlement of the judgment or order and shall, if required by the registrar so to do, produce to the registrar their briefs and such other documents as he may consider necessary to enable him to settle the judgment or order.

(2) Before settling and passing the judgment or order the registrar shall satisfy himself in such manner as he shall think fit that the provisions of rule 7(2) have been complied with.

(3) The registrar may adjourn any such appointment as he may think fit, and the parties shall attend such adjournment without further notice.

[Rule 8 amended: Gazette 14 Dec 1979 p. 3870; 28 Jun 2011 p. 2554.]

9. Default of attendance on settling draft

(1) If any party fail to attend the registrar's appointment for settling the draft of a judgment or order, or fail to produce his counsel's brief or such other document as may be required by the registrar, the registrar may proceed to settle and pass the judgment or order in his absence.

(2) Where the registrar proceeds under subrule (1) he may dispense with the production of counsel's brief or with the production of such documents, and may act upon such evidence as he may think fit, or may require the matter to be mentioned to the Court.

[Rule 9 amended: Gazette 14 Dec 1979 p. 3870; 28 Jun 2011 p. 2554.]

10. Dispensing with appointment

Notwithstanding rules 1 to 9, the registrar shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass the judgment or order without making any appointment for either purpose, and without notice to any party.

[Rule 10 amended: Gazette 14 Dec 1979 p. 3870; 28 Jun 2011 p. 2554.]

11. Registrar's and Court's powers to settle judgments etc.

(1) When settling a draft judgment or order the registrar shall have power to make variations to the draft in matters of detail or for the purpose of carrying out the substance or intent of the judgment or order.

(2) In case of dispute or doubt, the registrar shall at the request of a party refer the matter to the Court giving the judgment or making the order, and the Court may settle the whole of the terms of the judgment or order or such part thereof as may call for special direction.

(3) On the reference the Court will hear argument covering only what judgment or order was given or made, and if there is any reasonable doubt, leave may be given to relist the cause or action for rehearing. On any such reference the Court may vary or amend any minute, record, or fiat in order to give expression to the intent of the judgment or order and also to include any ancillary details which may have been omitted, and may finally settle the draft.

(4) Nothing herein contained shall derogate from any power or authority of the Court to reconsider any judgment or order before it has been drawn up, passed and entered.

[Rule 11 amended: Gazette 14 Dec 1979 p. 3870.]

12. Party to engross settled judgment or order

A judgment or order when settled and passed shall be engrossed by the party entering or extracting it.

13. Certificate for special allowance on taxation of costs

The registrar shall at the time of any attendance before him for the purpose of settling and passing any judgment or order, if requested by any party so to do on the ground that it is of a special nature or of unusual length or difficulty, certify for the information of the taxing officer whether in his opinion any special allowance ought to be made on taxation of costs in respect thereof.

[Rule 13 amended: Gazette 14 Dec 1979 p. 3870.]

14. Entry of judgments and orders

(1) A judgment or order, when settled and passed, is to be filed by the party entering or extracting it.

(2) A judgment or order when filed shall be deemed to be duly entered, and the date of the filing shall be deemed the date of entry.

(3) An order which is not required to be formally drawn up before being acted upon need not be entered unless it becomes necessary to serve the order for any purpose.

[Rule 14 amended: Gazette 27 Feb 2018 p. 568.]

15. Application to vary

A party may, within 7 days after a draft judgment or order has been settled, apply to the Court to add to or alter it for the purpose of making it correspond with the judgment or order as pronounced.

[Rule 15 amended: Gazette 14 Dec 1979 p. 3870; 27 Feb 2018 p. 569.]

16. Consent orders

(1) The parties to proceedings or their legal practitioners may file a written consent to the making of an order in those proceedings.

(2) Upon the written consent being filed, the registrar, a master or a judge may settle, sign and seal the order without any other application being made in any case in which, in the opinion of the registrar, master or judge, the Court would make such an order upon consent of the parties or may bring the matter before the Court which may, if it thinks fit and without any other application being made, direct the registrar to settle, sign, and seal the order in accordance with the terms of consent.

(3) The order shall state that it is made by consent and shall be of the same force and validity as if it had been made after a hearing by the Court.

[Rule 16 inserted: Gazette 3 Oct 1975 p. 3769; amended: Gazette 26 Mar 1993 p. 1845; 28 Oct 1996 p. 5699; 28 Jul 2010 p. 3466-7; 16 Aug 2017 p. 4416; 27 Feb 2018 p. 569; SL 2022/74 r. 15.]

[Order 44 deleted: Gazette 21 Feb 2007 p. 551.]

Order 44A — *Foreign Judgments Act 1991* (Commonwealth) rules

[Heading inserted: Gazette 22 Feb 2008 p. 637.]

1. Terms used

In this Order unless the contrary intention appears —

(a) the ***Act*** means the *Foreign Judgments Act 1991* of the Commonwealth; and

(b) words used in this Order have, in relation to proceedings taken under the Act, the same meaning in this Order as they have in the Act.

[Rule 1 inserted: Gazette 26 Aug 1994 p. 4414.]

2. Application of this Order

This Order applies to the registration and enforcement of judgments to which Part 2 of the Act applies.

[Rule 2 inserted: Gazette 26 Jan 1993 p. 824.]

3. Application for registration (Act s. 6)

(1) An application under section 6 of the Act, to have a judgment to which Part 2 of the Act applies registered in the Supreme Court may be made on motion *ex parte* to the Court.

(2) The motion paper shall be entitled "In the Matter of the *Foreign Judgments Act 1991* of the Commonwealth and regulations thereunder made relating to (country) and in the matter of a judgment of the (describing court) obtained in (describing the cause or matter) and dated the day of 20 ".

(3) Where the judgment is in respect of different matters, and some, but not all of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the

motion paper shall state the provisions in respect of which it is sought to register the judgment.

[Rule 3 inserted: Gazette 26 Jan 1993 p. 824.]

4. Evidence in support of application

(1) An application for registration shall be supported by an affidavit of the facts —

(a) exhibiting a certified copy of the judgment issued by the original court and authenticated by its seal and where the judgment is not in the English language a translation of the judgment certified by a notary public or authenticated by affidavit; and

(b) stating to the best of the information and belief of the deponent —

(i) that the applicant is entitled to enforce the judgment; and

(ii) as the case may require, either that at the date of the application the judgment has not been complied with, or if the judgment has been complied with in part, the amount in respect of which it remains unsatisfied; and

(iii) that at the date of the application the judgment is capable of enforcement in the country of the original court; and

(iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 7 of the Act;

and

(c) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration,

and shall be accompanied by such other evidence with respect to the enforceability of the judgment in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the regulations extending the Act to the country of the original court.

(2) Where a sum payable under the judgment is expressed in a currency other than the currency of Australia, the affidavit shall also state the amount which that sum represents in the currency of Australia calculated at the rate of exchange prevailing at the date of the judgment.

(3) The affidavit shall also state the full name, title, trade or business and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

[Rule 4 inserted: Gazette 26 Jan 1993 p. 825; amended: Gazette 12 Jun 2012 p. 2453.]

5. Security for costs

The Court may, in respect to an application for registration, order the judgment creditor to find security for the costs of the application and of any proceedings which may thereafter be brought to set aside the registration.

[Rule 5 inserted: Gazette 26 Jan 1993 p. 825.]

6. Order for registration

(1) An order for registration of a judgment shall be drawn up by, or on behalf of, the judgment creditor.

(2) The order need not be served on the judgment debtor.

(3) The order shall state the period after service of the notice prescribed by rule 8 within which an application may be made to set aside the registration.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

[Rule 6 inserted: Gazette 26 Jan 1993 p. 825.]

7. Record to be kept of registered judgments

A record must be kept at the Supreme Court, in the manner directed by the Chief Justice from time to time, of the judgments ordered to be registered under the Act.

[Rule 7 inserted: Gazette 27 Feb 2018 p. 569.]

8. Notice of registration

(1) Notice in writing of the registration of a judgment shall be served on the judgment debtor in the following manner —

(a) if within the jurisdiction, by personal service as in the case of a writ of summons, unless some other mode of service is ordered by the Court;

(b) if out of the jurisdiction, in accordance with Order 10 and the *Service and Execution of Process Act 1992* of the Commonwealth.

(2) The notice of registration shall state —

(a) full particulars of the judgment registered and the order for registration; and

(b) the name and address of the judgment creditor or his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served; and

(c) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside; and

(d) in accordance with the term of the order giving leave to register, the period of time from the date of service of

the notice within which an application to set aside the registration, may be made; and

(e) that no step for the enforcement of the judgment shall be taken until after the expiration of that period.

[Rule 8 inserted: Gazette 26 Jan 1993 p. 826; amended: Gazette 1 Mar 1994 p. 787.]

9. Indorsement of service

(1) Within 3 days from the day of service or within such extended period as may, in special circumstances, be allowed by order of the Court, the notice or a copy or duplicate of the notice shall be indorsed by the person serving it with the date of the month and the day of the week on which service was effected, and, if the notice is not so indorsed, the judgment creditor shall not be at liberty to issue execution on the judgment without the leave of the Court.

(2) Every affidavit of service of a notice referred to in subrule (1) shall state the date on which the indorsement was made.

[Rule 9 inserted: Gazette 26 Jan 1993 p. 826.]

10. Application to set aside registration

(1) An application to set aside the registration of a judgment shall be made by summons supported by affidavit.

(2) A summons shall be served not less than 7 clear days before the return day.

(3) On any such application the Court may direct that an issue between the judgment creditor and the judgment debtor shall be stated and tried and may give such directions in relation to the trial of such issue as may be necessary.

[Rule 10 inserted: Gazette 26 Jan 1993 p. 826.]

11. Enforcing registered judgment

(1) No step shall be taken to enforce a registered judgment until after the expiration of the period which, in accordance with the provisions of rule 6(3), is specified in the order giving leave to register as the period within which an application may be made to set aside the registration, or, if an order is made extending the period so specified, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, enforcement of the judgment shall be stayed until the application has been disposed of.

(3) The party desirous of enforcing a registered judgment shall produce to the proper officer an affidavit of the service of the notice of registration and of any order made by the Court in relation to the judgment registered.

[Rule 11 inserted: Gazette 26 Jan 1993 p. 827.]

12. Determination of certain questions

If, whether under the Act or under these rules, any question arises whether a judgment can be enforced in the country of the original court, or whether and if so what interest is payable under the judgment under the law of that country, that question shall be determined in accordance with the provisions, if any, in that behalf, as are contained in the regulations extending the Act to that country.

[Rule 12 inserted: Gazette 26 Jan 1993 p. 827.]

13. Certified copy of judgment obtained in this State

(1) An application under section 15 of the Act for a certified copy of a judgment obtained in the Supreme Court shall be made *ex parte* to the Principal Registrar on an affidavit made by the judgment creditor or his solicitor.

(2) An affidavit for the purposes of this rule shall —

(a) give particulars of the proceedings in which the judgment was obtained; and

(b) contain a statement of the grounds on which the judgment was based; and

(c) state whether the defendant did or did not object to the jurisdiction, and, if so, the grounds of such objection; and

(d) show that the judgment is not subject to any stay of enforcement and that no notice of appeal against it has been entered, and whether the time for appealing has expired; and

(e) state the rate at which the judgment carries interest.

(3) Where an application for a certified copy of a judgment is duly made under this rule, there shall be issued a copy of the judgment sealed with the seal of the Supreme Court and certified by the Principal Registrar as follows —

“

I certify that the above copy judgment is a true copy of a judgment obtained in the Supreme Court of Western Australia and this copy is issued in accordance with section 15 of the *Foreign Judgments Act 1991* of the Commonwealth.

(Signed)

Principal Registrar of the Supreme Court of Western Australia.

”.

together with a certificate as to such one or more as may be asked for of the following matters, also under the seal of the Supreme Court and certified by the Principal Registrar —

(a) particulars of the proceedings in which the judgment was obtained having annexed to it a copy of the writ of

summons or originating summons, by which the proceedings were instituted;

(b) the manner in which the writ or summons was served or that the defendant appeared thereto;

(c) the objections made to the jurisdiction, if any;

(d) the pleadings, if any, in the proceedings;

(e) the causes of action upon which the judgment was based;

(f) the rate at which the judgment carried interest;

(g) such other particulars as it may be necessary to give to the foreign tribunal in which it is sought to obtain execution of the judgment.

[Rule 13 inserted: Gazette 26 Jan 1993 p. 827-8.]

Order 45 — Accounts and inquiries

1. Summary order for account to be taken

(1) Where the statement of claim claims an account or involves the taking of an account the plaintiff may, at any time after the defendant has entered an appearance, or after the time limited for appearing, apply for an order under this rule.

(2) An application under this rule must be made by summons and must, unless the Court otherwise directs, be supported by affidavit or other evidence.

(3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

2. Direction for accounts etc. may be made at any stage

The Court may at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be taken or made.

3. Directions to be numbered

Where by any judgment or order, whether made in court or in chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number.

4. Directions as to mode of taking account

The Court may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the

account, the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

5. Account to be verified

(1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by affidavit to which the account must be exhibited.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party must file the account, and must notify the other parties forthwith that he has so filed the account, and of the filing of the affidavit verifying the account, and any supporting affidavit.

[Rule 5 amended: Gazette 27 Feb 2018 p. 569-70.]

6. Vouchers and contested etc. items, directions as to

Upon the taking of any account the Court may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged, shall be brought before the judge in chambers.

7. Surcharge or error, notice of

Any party seeking to charge an accounting party with an amount beyond that which he has by his account admitted to have received, or who alleges that any item in his account is erroneous in respect of amount or in any other respect must give him notice thereof, stating so far as he is able, the amount

sought to be charged with brief particulars thereof, or as the case may be, the grounds for alleging that the item is erroneous.

8. Allowances that can be made without direction

In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

9. Expediting proceedings

(1) In any case in which there has been undue delay in the proceedings before him, the registrar shall report to the Court the fact of such delay in such proceedings, and shall state in his opinion the cause thereof.

(2) If it shall appear to the Court on the report of the registrar or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings, or any other party to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and for costs, as the circumstances of the case may require.

(3) For the purposes aforesaid the Court may direct any party or the proper officer to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions that may be given, and the Court may make such order as it thinks fit as to the payment of the proper officer's costs.

[Rule 9 amended: Gazette 2 Jul 1982 p. 2316.]

10. Distributing fund before all persons entitled are ascertained

Where some of the persons entitled to share in property are ascertained and there is, or is likely to be, difficulty in ascertaining the remaining persons entitled, the Court may authorise immediate payment of the shares of the persons

ascertained without reserving any part of their shares to answer the costs subsequently to be incurred in ascertaining the remaining persons entitled.

11. Master etc. may be ordered to take accounts or make inquiries

(1) If under this Order the Court orders that an account be taken or that an inquiry be made, the Court may order that it be taken or made by a master, or by a registrar or other proper officer.

(2) The Court may, in respect of any order made under subrule (1), make any ancillary orders and give any directions that may be necessary.

[Rule 11 inserted: Gazette 21 Feb 2007 p. 551-2.]

12. Right to adjournment from registrar etc.

If a registrar or other proper officer, but not a master, is taking an account or making an inquiry, a party has the right to have the proceedings adjourned to a judge in person without any further summons for that purpose.

[Rule 12 inserted: Gazette 21 Feb 2007 p. 552.]

Order 46 — *Civil Judgments Enforcement Act 2004* rules

[Heading inserted: Gazette 21 Feb 2007 p. 552.]

1. Terms used

In this Order, unless the contrary intention appears —

Act means the *Civil Judgments Enforcement Act 2004*;

section means a section of the Act.

[Rule 1 inserted: Gazette 21 Feb 2007 p. 552.]

2. Applications that may be dealt with by registrar

(1) Each of the following applications, if made to the Court, may be dealt with by a registrar —

(a) an application made under a section listed in the Table to this subrule;

(b) an application for an order under section 10, 15(5)(a) or 20(3);

(c) an application for leave under section 13(1)(a).

Table

s. 15(1)	s. 41(2)	s. 59(1)
s. 27	s. 42(1)	s. 95(1)
s. 28	s. 49(1)	s. 101(1)
s. 32	s. 55(2)	s. 102(2)
s. 33	s. 56(1)	s. 103(2)
s. 35(1)	s. 58(1)	

(2) A registrar who is dealing with an application or request may exercise any power conferred by the Act on the Court in respect of the application.

(3) A registrar may conduct a means inquiry under section 30 and for that purpose exercise any power in section 30 or 31.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 552.]

3. Enforcing judgment in action between partners

(1) Proceedings under the Act to enforce a judgment in an action described in Order 71 rule 9 cannot be commenced without the leave of the Court.

(2) On an application for such leave such accounts and inquiries may be directed to be taken and made, and such directions given, as may be just.

[Rule 3 inserted: Gazette 22 Feb 2008 p. 637.]

[Order 47. Rules 1-8 and 10-15 deleted: Gazette 21 Feb 2007 p. 553; Rule 9 deleted: Gazette 15 Jun 1973 p. 2248.]

[Orders 48-50 deleted: Gazette 21 Feb 2007 p. 553.]

Order 51 — Receivers

1. Application for receiver and injunction

(1) An application for the appointment of a receiver may be made by summons (Form No. 60) or motion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for an order under subrule (1).

(3) In special circumstances the application for such injunction may be made *ex parte* on affidavit.

(4) On the hearing of an application under subrule (3) the Court may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver, and may direct that such summons be issued, returnable on a date fixed by the Court (Form No. 61 or No. 62).

[Rule 1 amended: Gazette 28 Jun 2011 p. 2552.]

*[**2.** Deleted: Gazette 21 Feb 2007 p. 553.]*

3. Security to be given by receiver

(1) Where a judgment is given or order made, directing the appointment of a receiver, then unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

[(3) deleted]

(4) The security referred to in subrule (2) must be filed and shall be kept as of record until duly vacated.

[Rule 3 amended: Gazette 30 Nov 1984 p. 3953; 28 Jun 2011 p. 2552; 16 Aug 2017 p. 4416; 27 Feb 2018 p. 570.]

4. Remuneration of receiver

A person appointed receiver shall be allowed such remuneration, if any, as may be fixed by the Court.

5. Accounts by receiver

(1) A receiver must file accounts at such intervals or on such dates as the Court may direct, and each such account must be verified by affidavit.

(1A) Unless the Principal Registrar has given approval for them to be filed electronically, the accounts (including the final accounts referred to in rule 8) cannot be filed electronically by a receiver.

(2) The receiver on filing an account must thereupon obtain an appointment from a registrar for the purpose of passing such account, and serve the account with a note of the appointment on each party interested who has an address for service in the proceedings.

(3) A certificate of the registrar stating the result of a receiver's account shall from time to time be taken.

[Rule 5 amended: Gazette 2 Jul 1982 p. 2316; 27 Feb 2018 p. 570.]

6. Payment of balances by receiver

The Court shall fix the days upon which the receiver must pay into court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him.

7. Default by receiver

(1) Where a receiver fails —

(a) to file an account or affidavit; or

(b) to attend for the passing of any account of his; or

(c) to make any payment; or

(d) to perform any duty,

he, and any or all of the parties to the cause or matter in which he was appointed, may be required on a summons taken out by the registrar or any party, to attend before a judge to show cause for the failure, and the judge may, either in chambers or after adjournment into court, give such directions as he thinks proper including, if necessary, the discharge of the receiver, and the appointment of another and the payment of costs.

(2) Without limiting subrule (1) where a receiver fails to attend for the passing of any account of his, or fails to file any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account, and may where he has failed to pay any such sum into court charge him with interest at the prescribed rate on that sum while in his possession as receiver.

(3) In this rule, ***prescribed rate*** means the rate of interest prescribed from time to time for the purposes of the *Civil Judgments Enforcement Act 2004* section 8.

[Rule 7 amended: Gazette 2 Jul 1982 p. 2316; 21 Feb 2007 p. 553; 28 Jun 2011 p. 2552.]

8. Final accounts to be filed

When a receivership has been completed, the receiver must file the receiver's final accounts.

[Rule 8 inserted: Gazette 27 Feb 2018 p. 570.]

9. Compensation to party restrained

Unless the Court otherwise orders, the making of an application for the appointment of a receiver shall be deemed to include an undertaking by the applicant for that relief that he will pay to any party affected by that order such compensation as the Court may in its discretion consider in the circumstances to be just, such compensation to be assessed by the Court, or in accordance with such directions as the Court may make and to be paid in such manner as the Court may direct.

[Rule 9 inserted: Gazette 5 Jun 1992 p. 2282.]

10. Compensation by applicant to party restrained

If upon the hearing of an application for the appointment of a receiver a restraint is imposed upon a party by an interlocutory undertaking to the Court, unless the Court otherwise orders there is a corresponding undertaking to the Court by the party having the benefit of the undertaking that he will pay to any party restrained or affected by the restraints imposed by the interlocutory undertaking such compensation that the Court may in its discretion consider in the circumstances to be just, such compensation to be assessed by the Court, or in accordance with such directions as the Court may make and to be paid in such manner as the Court may direct.

[Rule 10 inserted: Gazette 5 Jun 1992 p. 2282.]

11. Application to *Civil Judgments Enforcement Act 2004*

Unless the Court orders otherwise, this Order, with any necessary changes, applies to and in respect of the appointment of a receiver under the *Civil Judgments Enforcement Act 2004* Part 4 Division 7.

[Rule 11 inserted: Gazette 21 Feb 2007 p. 553.]

Order 52 — Interlocutory injunctions, interim preservation of property

1. Application for injunction

(1) An application for the grant of an injunction may be made by any party to a cause or matter either before at or after the hearing of the cause or matter, whether or not the injunction was claimed in the party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) If the case is one of urgency the plaintiff may make the application *ex parte* on affidavit, but otherwise the application must be made by motion or summons.

(3) In the case of urgency a person who intends to begin proceedings may make an application for the grant of an injunction before the issue of the writ or originating summons by which the cause or matter is to be begun, and the Court may grant the application on terms providing for the issue of the writ or originating summons, and such other terms, if any, as the Court thinks fit.

2. Detention etc. of property; securing funds in dispute

(1) The Court may, on the application of any party to a cause or matter, make an order for the detention, custody, preservation or inspection of any property which is the subject-matter of a cause or matter, or as to which any question may arise therein.

(2) For the purpose of enabling an order under subrule (1) to be carried out the Court may by order authorise a person to enter upon or into any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a fund is in dispute in a cause or matter, the Court may order that the fund be paid into court or otherwise secured.

(4) An order under this rule shall be subject to such terms, if any, as the Court thinks just.

[Rule 2 amended: Gazette 26 Aug 1994 p. 4415; 28 Oct 1996 p. 5699; 28 Jun 2011 p. 2552.]

3. Power to order taking of samples etc.

(1) The Court may for the purpose of enabling the proper determination of any cause or matter or of any question arising therein, make orders on terms for —

(a) the taking of samples of any property; or

(b) the making of any observation of any property; or

(c) the trying of any experiment on or with any property; or

(d) the observation of any process.

(2) An order under subrule (1) may authorise any person to enter upon or into any land or building in the possession of any party, or to do any other thing for the purpose of getting access to the property.

[Rule 3 amended: Gazette 28 Oct 1996 p. 5699; 28 Jun 2011 p. 2552.]

4. Disposal of perishable property etc.

(1) The Court may on the application of a party make an order for the sale or other disposal by a person named in the order and in such manner and on such terms (if any), as the Court thinks fit, of —

(a) any property of a perishable nature; or

(b) any shares or securities which appear likely to depreciate in value; or

(c) any personal property whatever which for any just and sufficient reason it is desirable to sell at once.

(2) This rule applies to goods, wares, merchandise, shares, securities, and personal property which are the subject of a cause or matter or as to which a question arises in a cause or matter.

[Rule 4 amended: Gazette 26 Aug 1994 p. 4415; 28 Oct 1996 p. 5699.]

5. Order for early trial on application for receiver, injunction etc.

Where on the hearing of an application made before the trial of a cause or matter, for an injunction, or appointment of a receiver, or an order under rule 2, 3 or 4, it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly, and may direct that such trial be held at such place and time as the Court thinks fit, and as respects the period before trial, may make such order as the justice of the case requires.

6. Recovering personal property subject to lien

Where —

(a) the plaintiff, or the defendant by way of counterclaim, seeks to recover specific property other than land; and

(b) the party from whom the recovery is sought does not dispute the title of the party making the claim, but claims to be entitled to retain the property by virtue of a lien, or otherwise as security for a sum of money,

the Court at any time after the claim to be so entitled appears from the pleadings (if any), or by affidavit or otherwise to its satisfaction, order that the party seeking to recover the property be at liberty to pay into court to abide the event of the action, the amount of money in respect of which the security is claimed, and such further sum (if any), for interest and costs as the Court

directs, and that upon such payment being made, the property claimed be given up to the party claiming it.

7. Directions

(1) The Court, on the hearing of an application made under any of rules 1 to 6, may give directions as to the further proceedings in the cause or matter.

[(2) deleted]

[Rule 7 amended: Gazette 28 Jun 2011 p. 2554; 16 Aug 2017 p. 4416.]

8. Allowance of income or transfer of property during case

Where —

(a) any real or personal property forms the subject-matter of any proceedings in the Court; and

(b) the Court is satisfied that it will be more than sufficient to answer all the claims on it which ought to be provided for in the proceedings,

the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein, or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

9. Injunction to include undertaking as to compensation to party restrained

Unless the Court otherwise orders upon the grant of an interlocutory injunction the order shall include an undertaking to the Court on the part of the applicant that he will pay to any party restrained or affected by restraints imposed by the interlocutory injunction or by any interim continuation of the interlocutory injunction, such compensation as the Court may in

its discretion consider in the circumstances to be just and such compensation shall be —

(a) assessed —

(i) by the Court; or

(ii) in accordance with such directions as the Court may make;

and

(b) paid in such manner as the Court may direct.

[Rule 9 inserted: Gazette 28 Feb 1992 p. 996-7.]

10. Compensation to party restrained by undertaking

Where upon the hearing of an application for an interlocutory injunction a restraint is imposed upon a party by an interlocutory undertaking to the Court, unless the Court otherwise orders there shall be a corresponding undertaking to the Court by the party having the benefit of the undertaking that he will pay to any party restrained or affected by the restraints imposed by the interlocutory undertaking such compensation as the Court may in its discretion consider in the circumstances to be just and such compensation shall be —

(a) assessed —

(i) by the Court; or

(ii) in accordance with such directions as the Court may make;

and

(b) paid in such manner as the Court may direct.

[Rule 10 inserted: Gazette 28 Feb 1992 p. 997.]

Order 52A — Freezing orders

[Heading inserted: Gazette 21 Feb 2007 p. 554.]

1. Terms used

In this Order, unless the contrary intention appears —

ancillary order has the meaning given by rule 3;

another court means a court outside Australia, or a court in Australia other than the Supreme Court of Western Australia;

applicant means a person who applies for a freezing order or an ancillary order;

freezing order has the meaning given by rule 2;

judgment includes an order;

respondent means a person against whom a freezing order or ancillary order is sought or made.

[Rule 1 inserted: Gazette 21 Feb 2007 p. 554.]

2. 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.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 554.]

3. 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 subrule (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.

[Rule 3 inserted: Gazette 21 Feb 2007 p. 554-5.]

4. Respondent need not be party to proceeding

The Court may make a freezing order or an ancillary order against a respondent even if the respondent is not a party to a proceeding in which substantive relief is sought against the respondent.

[Rule 4 inserted: Gazette 21 Feb 2007 p. 555.]

5. Order against judgment debtor, 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 subrule (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 subrule (3) applies — another court.

(2) This subrule applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

(3) This subrule 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.

(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 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 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, 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 ancillary order if the Court considers it is in the interests of justice to do so.

[Rule 5 inserted: Gazette 21 Feb 2007 p. 555-6.]

6. Court's other jurisdiction not affected

Nothing in this Order diminishes the inherent, implied or statutory jurisdiction of the Court to make a freezing order or ancillary order.

[Rule 6 inserted: Gazette 21 Feb 2007 p. 556.]

7. Service outside Australia of application for order

An application for a freezing order or an ancillary order may be served on a person who is outside Australia (whether or not the person is domiciled or resident in Australia) ~~if any of the assets to which the order relates are within the jurisdiction of the Court~~under Order 10 and, if the country is a Convention country, under Order 11A.

[Rule 7 inserted: Gazette 21 Feb 2007 p. ~~556~~556; amended: SL 2024/38 r. 15.]

8. Costs

(1) The Court may make any order as to costs as it considers appropriate in relation to an order made under this Order.

(2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

[Rule 8 inserted: Gazette 21 Feb 2007 p. 556-7.]

Order 52B — Search orders

[Heading inserted: Gazette 21 Feb 2007 p. 557.]

1. Terms used

In this Order, unless the contrary intention appears —

applicant means an applicant for a search order;

described includes described generally whether by reference to a class or otherwise;

premises includes a vehicle or vessel of any kind;

respondent means a person against whom a search order is sought or made;

search order has the meaning given by rule 2.

[Rule 1 inserted: Gazette 21 Feb 2007 p. 557.]

2. Search order

The Court may make an order (a search order), in any proceeding or in anticipation of any proceeding in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence which is or may be relevant to an issue in the proceeding or anticipated proceeding.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 557.]

3. Requirements for making of search order

The Court may make a search order if it is satisfied that —

(a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

(c) there is sufficient evidence in relation to a respondent that —

(i) the respondent possesses important evidentiary material; and

(ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

[Rule 3 inserted: Gazette 21 Feb 2007 p. 557.]

4. Court's other jurisdiction not affected

Nothing in this Order diminishes the inherent, implied or statutory jurisdiction of the Court to make a search order.

[Rule 4 inserted: Gazette 21 Feb 2007 p. 558.]

5. Terms of search order

(1) In this rule —

record includes a copy, photograph, film or sample.

(2) A search order may direct each person who is named or described in the order —

(a) to permit, or arrange to permit, such other persons as are named or described in the order —

(i) to enter premises specified in the order; and

(ii) to take any steps that are in accordance with the terms of the order;

and

(b) to provide, or arrange to provide, such other persons named or described in the order with any information, thing or service described in the order; and

(c) to allow such other persons named or described in the order to take and retain in their custody any thing described in the order; and

(d) not to disclose any information about the order, for up to 3 days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and

(e) to do or refrain from doing any act as the Court considers appropriate.

(3) Without limiting the generality of subrule (2)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include —

(a) searching for, inspecting or removing the thing; and

(b) making or obtaining a record of the thing or any information it may contain.

(4) A search order may contain such other provisions as the Court considers appropriate.

[Rule 5 inserted: Gazette 21 Feb 2007 p. 558.]

6. Independent solicitors, appointment of etc.

(1) If the Court makes a search order, the Court must appoint one or more solicitors, each of whom is independent of the applicant's solicitors, (the ***independent solicitors***) to supervise the execution of the order, and to do such other things in relation to the order as the Court considers appropriate.

(2) The Court may appoint an independent solicitor to supervise execution of the order at any one or more premises, and a different independent solicitor or solicitors to supervise execution of the order at other premises, with each independent solicitor having power to do such other things in relation to the order as the Court considers appropriate.

[Rule 6 inserted: Gazette 21 Feb 2007 p. 558-9.]

7. Costs

(1) The Court may make any order as to costs that it considers appropriate in relation to an order made under this Order.

(2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a search order.

[Rule 7 inserted: Gazette 21 Feb 2007 p. 559.]

Order 53 — Sales of land by the Court

1. Term used: land

In this Order ***land*** includes any interest in, or right over, land.

2. Power to order sale of land

If in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, shall deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

3. Manner of sale

(1) Where an order is made directing that land be sold the Court may appoint a party or some other person to have the conduct of the sale and may permit that party or person to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or under rule 4 direct for the best price that can be obtained.

(2) The Court may direct any party to join in the sale and conveyance or transfer, or in any other matter relating to the sale.

4. Directions

(1) The Court may either on the making of the order for sale, or on a subsequent application give such further directions as it thinks fit for the purpose of effecting the sale, including directions —

(a) appointing the party or person who is to have the conduct of the sale;

(b) fixing the manner of sale, that is to say, whether the sale is to be by contract conditional on the approval of the

Court, by private treaty, by public auction, by tender, or by some other manner;

(c) fixing a reserve or minimum price;

(d) requiring payment of the purchase money into court or to trustees or other persons;

(e) for settling the particulars and conditions of sale;

(f) for obtaining evidence of value;

(g) fixing the remuneration to be allowed to any auctioneer, real estate agent, or other person.

(2) An application under subrule (1) which is made subsequent to the order for sale may be made by summons.

[Rule 4 amended: Gazette 28 Jun 2011 p. 2552.]

5. Certificate of sale

(1) Where land is sold pursuant to this Order the result of the sale must be certified —

(a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and

(b) in any other case, by the solicitor of the party or person having the conduct of the sale,

unless in either case the Court otherwise orders.

(2) The Court may require that the certificate be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(3) The solicitor of the party or person having the conduct of the sale must file the certificate and any affidavit verifying it.

6. Mortgage, exchange or partition

Rules 3, 4 and 5 apply so far as applicable and with the necessary modifications, to the mortgage, exchange or partition of any land under an order of the Court, as they apply to a sale of any land pursuant to this Order.

7. Reference of matters to counsel

(1) The Court may refer to counsel —

(a) any matter relating to the investigation of the title to any land with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof; and

(b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement, conditions of sale or other instrument; and

(c) any other matter the Court thinks fit,

and may act upon the opinion given by counsel in the matter referred.

(2) Unless the Principal Registrar has given approval for it to be filed electronically, the opinion given by counsel cannot be filed electronically.

[Rule 7 amended: Gazette 27 Feb 2018 p. 570-1.]

8. Objection to counsel's opinion

Any party may object to any opinion given by counsel on a reference under rule 7, and thereupon the point in dispute shall be determined by the judge either in chambers or in Court as he thinks fit.

Order 54 — Originating and other motions

1. Application of this Order

This Order applies to all motions, subject however, to any special provisions contained in these rules or made by or under any Act.

2. Which applications to be made by motion

Where by these rules any application is authorised to be made to the Court, such application if made in Court, must be made by motion.

3. Notice of motion

(1) Except where an application by motion may properly be made *ex parte*, a motion shall not be made without previous notice to the party to be affected thereby, but the Court, if satisfied that the delay caused by giving notice would or might entail irreparable or serious mischief, may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court thinks just.

(2) Any party affected by such an order may apply to the Court to set it aside.

4. Time of notice of motion

Unless upon application, which may be made *ex parte*, the Court otherwise orders, there must be at least 2 clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

5. Form of notice of motion

(1) The form of the notice of an originating motion must be in Form No. 64 and the notice of any other motion in Form No. 65.

(2) Where leave has been given under rule 4 to serve short notice of motion, that fact must be stated in the notice.

(3) The notice of a motion must contain a concise statement of the nature of the claim made or the relief or remedy sought.

6. Issue of notice of motion

(1) The notice of motion by which proceedings are begun must be issued out of the Central Office.

(2) The notice is issued upon its being sealed by the proper officer.

(3) Every other notice must be filed before service.

7. Service of notice of motion with writ etc.

(1) The plaintiff may serve a notice of a motion to be made in an action upon a defendant with the writ or other originating process, or at any time after service of such writ or other originating process, whether or not the defendant has entered an appearance in the action.

(2) Where notice of a motion is to be served on a person who has not entered an appearance, and is not in default of appearance the notice must be served personally.

8. Adjournment etc.

(1) If on the hearing of a motion or other application the Court is of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court may think fit to impose.

(2) The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court shall think fit.

[Rule 8 amended: Gazette 9 Nov 1973 p. 4164.]

Order 55 — Committal and attachment

1. Term used: contemnor

In this Order —

contemnor means a person guilty or alleged to be guilty of contempt of court.

2. Committal for contempt of court

Subject to the Act, the power of the Court to punish for contempt of court may be exercised by an order of committal made by a judge, or judge of appeal, sitting alone.

[Rule 2 inserted: Gazette 29 Apr 2005 p. 1792.]

3. Contempt in face of Court

(1) When it is alleged or appears to the Court on its own view that a person is guilty of contempt of court committed in the face of the Court or in the hearing of the Court, the presiding judge may, by oral order, direct that the contemnor be arrested and brought before the Court as soon thereafter as the business of the Court permits, or may issue a warrant under his hand for the arrest of the contemnor.

(2) When the contemnor is brought before the Court, the Court shall —

(a) cause him to be informed orally of the contempt with which he is charged; and

(b) require him to make his defence to the charge; and

(c) after hearing him proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make an order for the punishment or discharge of the contemnor.

(3) The Court may, pending disposal of the charge —

(a) direct that the contemnor be detained in such custody as the Court directs; or

(b) direct that the contemnor be released on bail.

(4) The powers given by this rule are exercisable, mutatis mutandis, by a judge sitting in chambers except that the contemnor must be brought before the Court sitting in court, and the Court shall hear and determine the charge and make the order.

4. Other cases of contempt

(1) In a case to which rule 3 does not apply, and subject to subrule (2), application for punishment for contempt of court must be made by motion on notice to the contemnor, for an order that he be committed to prison for his contempt.

(2) Applications for committal for contempt of court consisting of disobedience to judgments or orders of the Court made by a judge, or orders of the Court made by the master, may be made by summons to a judge in chambers.

[Rule 4 amended: Gazette 28 Jun 2011 p. 2552 and 2554.]

5. Form and service of notice or summons

(1) The notice of motion or summons (as the case may be) must specify the contempt of which the contemnor is alleged to be guilty, and be entitled in the proceeding, if any, with reference to which the contempt is alleged to have been committed or if it is not alleged to have been committed with reference to a particular proceeding, shall be entitled "The State of Western Australia against" the contemnor (naming him) *ex parte* the applicant.

(2) Unless the Court otherwise orders, the notice of motion or summons accompanied by a copy of the affidavit in support of the application must be served personally on the contemnor.

[Rule 5 amended: Gazette 19 Apr 2005 p. 1299.]

6. Arresting contemnors

Where —

(a) notice of motion for punishment for contempt of court has been filed, or proceedings for punishment of a contempt have been commenced; and

(b) it appears to the Court that the contemnor is likely to abscond or otherwise withdraw himself from the jurisdiction of the Court,

the Court may issue a warrant for the arrest of the contemnor and his detention in custody until he is brought before the Court to answer the charge unless he, in the meantime, gives security in such manner and in such sum as the Court directs for his appearance in person to answer the charge and to submit to the judgment or order of the Court.

7. Punishing contemnors

(1) The Court may punish contempt of court by committal of the contemnor to prison, or by imposing a fine on him, or by both committal and fine.

(2) When the Court imposes a fine, it may order that the contemnor be imprisoned, or further imprisoned, until the fine is paid.

(3) Where the contemnor is a corporation the Court may punish contempt of court by sequestration, or fine or both.

(4) An order of committal may be in Form No. 66.

8. Execution of committal order may be suspended

The Court making an order of committal may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as the Court thinks fit.

9. Discharge from committal

(1) The Court may, on the application of any person committed to prison for contempt of court, discharge him, notwithstanding that the term for which he may have been ordered to be committed has not expired.

(2) An application for the discharge of a person committed to prison for contempt, and any order made thereon, shall be served on the sheriff by the person making the application.

[Rule 9 amended: Gazette 14 Dec 1979 p. 3870.]

10. Saving for other powers

(1) Nothing in rules 1 to 9 shall be taken as affecting the power of the Court —

(a) on an application for an order that a contemnor be required to pay a fine or give security, to make such an order; or

(b) to enforce orders and judgments by writ of attachment in the cases provided for in the Act.

(2) The provisions of this Order so far as applicable, and with the necessary modifications apply in relation to an application for an order that a contemnor pay a fine or give security, as they apply in relation to an application for an order of committal.

[Rule 10 amended: Gazette 28 Jun 2011 p. 2554.]

11. Court may make peremptory order in first instance

Where there has been non-performance of an undertaking given to the Court, the Court may, in the first instance, instead of directing the issue of a writ of attachment or ordering committal, make a peremptory order for the performance of the act undertaken to be done.

[Rule 11 amended: Gazette 9 Nov 1973 p. 4164.]

12. Application of r. 6 to 9 to attachment etc.

Rules 6 to 9 of this Order apply in the case of applications for attachment or committal for disobedience to judgments or orders, or for failure to perform or observe any such undertaking as is mentioned in rule 11.

Order 56 — Judicial review

[Heading inserted: Gazette 17 Dec 2013 p. 6231.]

Division 1 — General

[Heading inserted: Gazette 21 Feb 2007 p. 559.]

1. Terms used

(1) In this Order, unless the contrary intention appears —

application means an application for judicial review of a reviewable decision or of reviewable conduct;

challenged conduct means reviewable conduct in respect of which an application is made;

challenged decision means a reviewable decision in respect of which an application is made;

conduct includes any act and any omission;

limitation period —

(a) for an application for judicial review of a reviewable decision, means 6 months after the later of —

(i) the date on which the decision is made; or

(ii) the date on which the applicant became aware of it;

(b) for an application for judicial review of reviewable conduct, other than a failure to make a decision, means 6 months after the later of —

(i) the date on which the conduct occurred; or

(ii) the date on which an applicant became aware of it,

unless a written law sets a different period, in which case it means that period;

remedy includes relief;

reviewable conduct means any conduct, including conduct for the purpose of making a decision and a failure to make a decision, that the Court, under the common law or in equity, has jurisdiction to review and to grant relief in respect of by way of a writ, a declaration or an injunction;

reviewable decision means any decision that the Court, under the common law or in equity, has jurisdiction to review and to grant relief in respect of by way of a writ, a declaration or an injunction;

writ means a writ of certiorari, mandamus, prohibition or *procedendo* or an information of *quo warranto*.

(2) For the purposes of paragraph (a) of the definition of ***limitation period*** in subrule (1), it does not matter if on the relevant date the reviewable decision is not or had not been extracted or given in writing.

[Rule 1 inserted: Gazette 17 Dec 2013 p. 6232-3.]

2. Making an application

(1) To make an application, a person must file an application in Form No. 67A.

(2) In one application a person may apply for any or a combination of these remedies —

(a) one or more writs;

(b) either a declaration or an injunction or both;

(c) an order having the same effect as a remedy that could be provided by means of a writ.

(3A) An application must, in accordance with Order 71A, state —

(a) the applicant's geographical address; and

(b) the applicant's service details.

(3) An application must state the grounds on which it is made.

(4) If an application is made outside the limitation period for the application —

(a) the application must include an application for leave to proceed with the application; and

(b) the applicant must file an affidavit explaining why the application was not made within the limitation period.

[Rule 2 inserted: Gazette 17 Dec 2013 p. 6233; amended: Gazette 13 Nov 2015 p. 4645.]

3. Serving an application

After making an application, the applicant must serve it, by personal service, on —

(a) the person who made the challenged decision or engaged in the challenged conduct; and

(b) any person who was a party to the proceedings in which the challenged decision was made or the challenged conduct occurred.

[Rule 3 inserted: Gazette 17 Dec 2013 p. 6233.]

4. Options of person served with application

A person served with an application may —

(a) enter an appearance under Order 12, which applies with any necessary changes; or

(b) file, and serve on the applicant, a notice stating the person does not intend to take part in the proceedings and will accept any order made by the Court on the application other than as to costs.

[Rule 4 inserted: Gazette 17 Dec 2013 p. 6233.]

5. Procedure on application

(1) The applicant and any person served with an application are entitled to be heard on it.

(2) On an application, the Court may do one or more of the following —

(a) if the application is made outside the limitation period for the application, give or refuse the applicant leave to proceed with the application;

(b) order the applicant to serve the application on a person whom the Court considers might have an interest in the challenged decision, the challenged conduct or the outcome of the application;

(c) order the applicant or any other person to file an affidavit as to any facts material to the application, the challenged decision or the challenged conduct;

(d) give the applicant leave to file and rely on an affidavit (whether or not made by the applicant);

(e) allow a person not served with the application to be heard on it;

(f) give the applicant leave to require a person served with the application to give discovery under Order 26;

(g) give the applicant leave to require a person served with the application to answer interrogatories under Order 27;

(h) allow the applicant to amend the application;

(i) adjourn the hearing of the application;

(j) refuse the whole or a part of the application if it has no reasonable prospect of succeeding;

(k) grant or refuse the application;

(l) if it considers the remedy applied for would be inadequate, grant any other remedy.

(3) Subrule (2) does not limit the operation of Order 4A or the powers of the Court when dealing with an application.

(4) A single judge dealing with an application may, without deciding it, order it be heard by the Court of Appeal.

[Rule 5 inserted: Gazette 17 Dec 2013 p. 6233-4.]

6. Discovery and interrogatories

Orders 26 and 27 do not apply in proceedings on an application unless and to the extent the Court, under rule 5(2) or Order 4A, gives leave and orders otherwise.

[Rule 6 inserted: Gazette 17 Dec 2013 p. 6234.]

7. Costs

(1) The Court may make an order for the payment of the costs of the proceedings on an application against one or more of these persons —

(a) the applicant;

(b) the person who made the challenged decision or engaged in the challenged conduct;

(c) a person served with the application;

(d) a person not served with the application whom the Court allowed to be heard on it.

(2) Subject to rule 24, the Court may make such an order before, when or after deciding the application.

[Rule 7 inserted: Gazette 17 Dec 2013 p. 6235.]

*[**8, 9.** Deleted: Gazette 17 Dec 2013 p. 6232.]*

10. Issue and filing of writs

(1) A writ issued on an application must —

(a) be prepared by the applicant; and

(b) in accordance with Order 71A, state —

(i) the party's geographical address; and

(ii) the party's service details;

and

(c) be issued out of the Central Office.

(2) Upon presentation of every such writ for sealing, a copy thereof signed by or on behalf of the solicitor for the party issuing it, or by the party, if he is proceeding in person, must be filed.

(3) Every such writ must be filed together with the return thereto and a copy of any order made thereon.

[Rule 10 amended: Gazette 21 Feb 2007 p. 560-1; 23 Apr 2013 p. 1595 (disallowed: Gazette 1 Nov 2013 p. 4910); 17 Dec 2013 p. 6235; 27 Feb 2018 p. 571.]

Division 2 — Certiorari

[Heading inserted: Gazette 21 Feb 2007 p. 560.]

*[**11-13.** Deleted: Gazette 17 Dec 2013 p. 6235.]*

14. Forms

A writ of certiorari must be in Form No. 67 with such variations as the circumstances may require.

[Rule 14 amended: Gazette 28 Jul 2010 p. 3483.]

Division 3 — Mandamus

[Heading inserted: Gazette 21 Feb 2007 p. 560.]

15. Applicant to show interest etc.

(1) A writ of mandamus, or for relief of a like nature shall be granted only on the application of a person who is interested in the relief sought.

(2) Subject to subrule (3), the applicant must state by affidavit that the application is made at his instance as applicant.

(3) When the applicant is a corporation an officer or agent of the corporation must state by affidavit that the application is to be made by the corporation as applicant.

[Rule 15 amended: Gazette 28 Jun 2011 p. 2552; 23 Apr 2013 p. 1595 (disallowed: Gazette 1 Nov 2013 p. 4910); 17 Dec 2013 p. 6235.]

16. Form of writ

(1) Unless otherwise ordered by the Court, a writ of mandamus shall command the person to whom it is addressed to do the act in question, or show cause why he has not done it.

(2) The Court may direct that the command shall be peremptory in the first instance.

(3) A writ of mandamus must be in Form No. 69 with such variations as the circumstances may require.

[Rule 16 amended: Gazette 9 Nov 1973 p. 4165.]

17. Time for return of writ

Unless otherwise ordered by the Court, the writ shall be returnable within the same time after service as is allowed for appearance in the case of a writ of summons.

[Rule 17 amended: Gazette 9 Nov 1973 p. 4165.]

18. Service

(1) Unless the Court otherwise directs —

(a) where a writ of mandamus is directed to one person only, the original writ shall be personally served upon him by delivering it to him; and

(b) where the writ is directed to 2 or more persons, it shall be personally served upon all of them but one in the manner prescribed for personal service of a writ of

summons, and shall be served upon the remaining one by delivering the original writ to him.

(2) If the writ is issued by means of the ECMS —

(a) the applicant may print from the ECMS 1 or more copies of the writ; and

(b) a printed copy may be treated as the original writ for the purposes of subrule (1).

[Rule 18 amended: Gazette 9 Nov 1973 p. 4165; 27 Feb 2018 p. 571; 31 Dec 2019 p. 4677.]

19. Service on corporate body, or justices

Unless otherwise directed by the Court, when a writ of mandamus is directed to justices, or to a corporation, or a company, or a public authority, it shall be served on so many of the justices, or of the officers or members of the corporation or company or public authority as are competent to do the act commanded, unless by law some other mode of service is sufficient.

[Rule 19 amended: Gazette 9 Nov 1973 p. 4165.]

20. Return, content etc. of

(1) The persons to whom a writ of mandamus is directed shall, within the time allowed by the writ, file the writ or a copy of the writ, together with a certificate indorsed thereon or annexed thereto and signed by them, stating that they have done the act commanded by the writ, or stating the reason why they have not done so.

(2) A copy of the return must be served on the applicant on the day on which it is filed.

[Rule 20 amended: Gazette 27 Feb 2018 p. 571.]

21. Pleading to return

If the return does not certify that the act commanded has been done, the same proceedings shall be had and taken, and within the same time as if the return were a defence in an action in which the applicant was the plaintiff, and the persons to whom the writ is directed were the defendants and had pleaded the return as their defence.

22. No motion for judgment needed in some cases

When a point of law is raised in answer to a return or another pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party without a motion for judgment being made or required.

23. Peremptory writ

If the questions of fact and law, if any, raised by the return are determined in favour of the applicant by judgment of the Court or otherwise, the applicant shall be entitled to a peremptory writ of mandamus commanding the persons to whom the first writ was directed to do the act commanded therein and the peremptory writ shall be awarded by the judgment or if there is no judgment, by a separate order.

24. Costs

(1) Where a peremptory writ is awarded in the first instance, the Court shall, at the time of granting the writ, direct by and to whom the costs of the proceedings shall be paid.

(2) Where a peremptory writ is not awarded in the first instance, and the return to the writ certifies that the person to whom it is addressed has done the act commanded by the writ, an application for an order for the costs of the proceedings may be made at any time within one month after the return is filed.

(3) The application shall be made to the Court and, if it is reasonably possible, to the judge by whom the writ was awarded.

[Rule 24 amended: Gazette 9 Nov 1973 p. 4165.]

25. Proceedings in nature of interpleader

When upon an application for a writ of mandamus it appears that some person other than the applicant claims that the person to whom it is proposed to direct the writ shall do some act inconsistent with the act which the applicant claims to have done, the person to whom the writ is directed may apply to the Court for an order that the last-named person be substituted for him or joined with him in all subsequent proceedings up to the issue of a peremptory writ of mandamus, and the Court may make such order on the application as is just.

[Rule 25 amended: Gazette 9 Nov 1973 p. 4165; 23 Apr 2013 p. 1595 (disallowed: Gazette 1 Nov 2013 p. 4910); 17 Dec 2013 p. 6235.]

26. Proceedings not to abate due to death etc.

Proceedings upon an application for a writ of mandamus shall not abate or be discontinued by reason of the death, resignation, retirement or removal from office of the person who made the challenged decision or to whom the writ is directed, but may be continued and carried on either in his name or otherwise, and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

[Rule 26 amended: Gazette 23 Apr 2013 p. 1595 (disallowed: Gazette 1 Nov 2013 p. 4910); 17 Dec 2013 p. 6235.]

*[**27.** Deleted: Gazette 17 Dec 2013 p. 6235.]*

28. Mandamus by order

In any case in which the Court directs the issue of a peremptory writ of mandamus in the first instance, the command may be expressed in an order of the Court without the issue of a writ, and the order shall have the same effect as a peremptory writ of mandamus.

29. No action against party obeying writ or order

An action or proceeding shall not be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus or an order of the Court for relief of the like nature issued by the Court.

[Rule 29 amended: Gazette 9 Nov 1973 p. 4165.]

Division 4 — Prohibition and *procedendo*

[Heading inserted: Gazette 17 Dec 2013 p. 6235.]

30. Court may direct service of statement of claim instead of issuing prohibition

The Court may in any case, instead of directing the issue of a writ of prohibition, direct the applicant to deliver to the opposite party a statement of claim setting forth the facts upon which his claim to the writ is founded, and thereupon the same proceedings shall be had and taken in all respects as in an action.

[Rule 30 amended: Gazette 9 Nov 1973 p. 4165.]

31. Proceedings on judgment

If judgment is given for the applicant, the judgment shall include a direction that a writ of prohibition shall issue.

32. Writ of *procedendo*

(1) Where a writ of prohibition has been issued and it is afterwards made to appear to the Court that relief ought to be given against the judgment or order by which the writ was awarded on a ground on which relief might be given against a judgment in an action, the Court may direct that a writ of *procedendo* shall be issued commanding the judicial tribunal to which the writ of prohibition was issued to proceed to hear or determine the matter in question or otherwise proceed therein as if the writ of prohibition had not been issued.

(2) A writ of *procedendo* shall be in Form No. 70.

[Rule 32 amended: Gazette 9 Nov 1973 p. 4165.]

33. Prohibition by order

(1) The prohibition may be expressed in an order of the Court without the issue of a writ, and such order shall have the same effect as a writ of prohibition.

(2) A writ of prohibition shall be in Form No. 71.

Division 5 — *Quo warranto*

[Heading inserted: Gazette 21 Feb 2007 p. 560.]

34A. Application for information of *quo warranto*

To apply for an information of *quo warranto* without applying for judicial review, a person must apply *ex parte* by originating motion.

[Rule 34A inserted: Gazette 17 Dec 2013 p. 6236.]

34. Rules of court applicable

Subject to this Order, and to any direction as to practice or procedure given by the Court, the rules of the Supreme Court

apply, so far as they are relevant, to informations of *quo warranto*.

[Rule 34 amended: Gazette 9 Nov 1973 p. 4165.]

35. Signature and service of information

(1) The information shall be in the name of the Attorney General or the applicant, as the case may be, on behalf of the State, and shall be signed by the Attorney General or the applicant.

(2) A copy of the information must be served on the respondent or, if he or she appeared by a lawyer, on the lawyer.

[Rule 35 amended: Gazette 19 Apr 2005 p. 1299; 23 Apr 2013 p. 1596 (disallowed: Gazette 1 Nov 2013 p. 4910); 17 Dec 2013 p. 6236.]

Order 56A — Review orders under the *Magistrates Court Act 2004*

[Heading inserted: Gazette 29 Apr 2005 p. 1797.]

1. Terms used

(1) In this Order —

review order means an order that may be made under section 36;

section means a section of the *Magistrates Court Act 2004*.

(2) A term defined in the *Magistrates Court Act 2004* has the same meaning in this Order as it has in that Act, unless the contrary intention appears.

[Rule 1 inserted: Gazette 29 Apr 2005 p. 1797.]

2. Application for review order, making

(1) An application to the Court for a review order —

(a) must be made *ex parte*; and

(b) must be titled "In the matter of an application under the *Magistrates Court Act 2004* section 36 for a review order against [*name of the Court officer*], [*title of office held*] of the [*name of court*] at [*place*] *EX PARTE* [*name of applicant*], or as the case requires; and

(c) must be supported by an affidavit.

(2) The application must be for an order that requires the Court officer, and any person who will be affected by the Court officer's act, order or direction that is in question, to satisfy the Supreme Court at a hearing that the act, order or direction should or should not be done or made or set aside, as the case requires.

[Rule 2 inserted: Gazette 29 Apr 2005 p. 1798.]

3. Application for review order, procedure on

(1) An application for a review order shall be first listed before a judge in chambers.

(2) The judge may —

(a) refuse the application; or

(b) make a review order and order that it shall be heard by —

(i) a judge in chambers or in court; or

(ii) the Court of Appeal;

or

(c) make an order under section 36(5),

and, unless the judge acts under paragraph (b) or (c), may do any or all of the following —

(d) direct that the application be decided by a judge sitting in court;

(e) direct that notice of the application be served on such persons as the judge directs;

(f) adjourn the hearing of the application.

(3) If a judge makes a review order, whether under section 36(6) or on an application made under rule 2 —

(a) it may include an order as to who, apart from the Court officer named in the application, must be served with the review order;

(b) it must include an order as to how the review order must be served;

(c) it may include an order as to costs, and as to giving security for costs, or otherwise;

(d) it may include an order that the review order operates as a stay of the proceedings in question until such time as the Court specifies in the order or orders otherwise.

(4) If a review order is made that is to be heard by the Court of Appeal, the *Supreme Court (Court of Appeal) Rules 2005* apply in addition to this Order.

[Rule 3 inserted: Gazette 29 Apr 2005 p. 1798-9.]

4. Review order, service of

If a review order is made, it must be served in the manner specified in the order on —

(a) the registrar of the court at the place where the Court officer concerned was at the relevant time; and

(b) any other person who the review order requires to be served,

at least 7 clear days before the hearing date set for the review order.

[Rule 4 inserted as rule 3: Gazette 29 Apr 2005 p. 1799; renumbered as rule 4: Gazette 21 Feb 2007 p. 561.]

5. Review order, hearing of

(1) At the hearing of a review order any person who wants to oppose the making of an order under section 36(4) or (5) is entitled to be heard, even if he or she has not been served with the review order.

(2) The Court may order any person who is served with a review order, or who is heard at the hearing of a review order, to pay costs.

(3) A person who wants to adduce affidavit evidence at the hearing of a review order must give reasonable notice of the fact to each other party.

[Rule 5 inserted as rule 4: Gazette 29 Apr 2005 p. 1799; renumbered as rule 5: Gazette 21 Feb 2007 p. 561.]

6. Final order, making and service of

(1) If the Court makes an order under section 36(4), the Court may include an order as to costs or may adjourn the question.

(2) If the Court makes an order under section 36(4), the order must be served on —

(a) the Court officer concerned; and

(b) any other person who the Court orders to be served.

[Rule 6 inserted as rule 5: Gazette 29 Apr 2005 p. 1799; renumbered as rule 6: Gazette 21 Feb 2007 p. 561.]

Order 57 — Habeas corpus

1. Application for writ

(1) An application for a writ of *habeas corpus ad subjiciendum* may be made in the first instance to a judge sitting in Court or in chambers, unless the application is made on behalf of an infant, in which case it must be made in the first instance to a judge sitting in chambers.

(2) The application may be made *ex parte*, and subject to subrule (3) must be supported by an affidavit by the person restrained showing that the application is made at his instance and setting out the nature of the restraint.

(3) The requirement that an application be supported by an affidavit does not apply —

(a) to an application made on behalf of an infant; or

(b) when the person restrained is unable to make the affidavit.

(4) Where the person restrained is unable to make the affidavit required by subrule (2) the affidavit may be made by some other person on his behalf and must state that the person restrained is unable to make the affidavit himself and for what reason.

[Rule 1 amended: Gazette 9 Nov 1990 p. 5526; 29 Apr 2005 p. 1795; 21 Feb 2007 p. 561; 28 Jun 2011 p. 2552.]

2. Power of Court when *ex parte* application made

(1) The judge to whom an application is made under rule 1 *ex parte* may —

(a) refuse the application; or

(b) order that the writ be issued immediately,

and, unless an order is made for the writ to issue immediately, may do any or all of the following —

(c) if the judge is not sitting in court, direct that the application be decided by a judge sitting in court;

(d) direct that notice of the application be served on the person against whom the issue of the writ is sought;

(e) adjourn the hearing of the application.

(2) The notice of motion must be served on the person against whom the issue of the writ is sought, and on such other persons as the Court or judge may direct, and unless the Court or judge otherwise directs, there must be at least 4 clear days between the service of the notice and the date named therein for the hearing of the application.

[Rule 2 amended: Gazette 9 Nov 1990 p. 5526; 29 Apr 2005 p. 1795; 21 Feb 2007 p. 561.]

3. Copies of affidavits to be supplied

Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges, copies of the affidavits which he proposes to use at the hearing of the application.

4. Court may order release of person restrained

Without prejudice to rule 2(1) the Court or judge hearing an application for a writ of *habeas corpus ad subjiciendum* may, in its or his discretion, order that the person restrained be released, and such order shall be a sufficient warrant to any gaoler, constable or other person for the release of the person under restraint.

[Rule 4 amended: Gazette 9 Nov 1990 p. 5526.]

5. Signed copy of writ to be filed

(1) When a writ of habeas corpus is presented for sealing, the person presenting it must at the same time file a copy of the writ

signed by or on behalf of the solicitor for the party issuing it, or by the party himself if he is proceeding in person.

(2) The writ, or a copy of it, cannot be filed electronically.

[Rule 5 amended: Gazette 27 Feb 2018 p. 572.]

6. Order for issue of writ, contents of

(1) If a judge orders that a writ of habeas corpus be issued, the order must state —

(a) the date on which the writ is returnable; and

(b) whether the writ is returnable before a judge or the Court of Appeal.

(2) If a writ is made returnable before the Court of Appeal, the *Supreme Court (Court of Appeal) Rules 2005* apply in addition to this Order.

[Rule 6 inserted: Gazette 21 Feb 2007 p. 561.]

7. Service of writ and notice

(1) Subject to subrules (2) and (3) a writ of *habeas corpus ad subjiciendum* must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to the superintendent or keeper of a prison, or other government official, it must be served by leaving it with a servant, officer, or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in the manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) If the writ is issued by means of the ECMS —

(a) the applicant may print from the ECMS 1 or more copies of the writ; and

(b) a printed copy may be treated as the writ for the purposes of this rule.

[Rule 7 amended: Gazette 28 Jul 2010 p. 3484; 28 Jun 2011 p. 2552-3; 27 Feb 2018 p. 572; 31 Dec 2019 p. 4677.]

8. Return to writ of habeas corpus

(1) The person to whom a writ of *habeas corpus ad subjiciendum* is directed must at the time and place specified in the writ, make his return to the writ.

(2) The return must be indorsed on or attached to the writ and must state all the causes of the detention of the person restrained.

(3) The return must be filed.

(4) The return may be amended, or another return substituted for it, by leave of the Court or a judge.

9. Procedure on hearing

(1) Upon the return of a writ of *habeas corpus ad subjiciendum*, the return shall first be read, and a motion shall then be made for discharging or remanding the person restrained or for amending or quashing the return.

(2) Where the person restrained is brought up in accordance with the writ, he or his counsel shall first be heard, then the person denying his right to be discharged, or his counsel, and then the person restrained, or his counsel in reply.

10. Form of writ

A writ of habeas corpus must be in Form No. 73.

Order 58 — Proceedings by originating summons

Division 1 — Introductory

[Heading inserted: Gazette 22 Feb 2008 p. 638.]

1. Which proceedings to be commenced by originating summons

Subject to the provisions of any Act and of these rules, civil proceedings between parties, which may be heard in chambers, must be commenced by originating summons.

Division 2 — Administration and trusts

[Heading inserted: Gazette 22 Feb 2008 p. 638.]

2. Executors etc. seeking certain relief without administration

The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee or next of kin of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in chambers for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require (that is to say) the determination, without an administration of the estate or trust, of any of the following questions or matters —

(a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin or cestui que trust;

(b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others;

(c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;

(d) the payment into court of any money in the hands of the executors or administrators or trustees;

(e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(f) the approval of any sale, purchase, compromise, or other transaction;

(g) the determination of any question arising in the administration of the estate or trust.

3. Executors etc. applying for administration

Any of the persons named in rule 2 may in like manner apply for and obtain an order for —

(a) the administration of the estate of the deceased;

(b) the administration of the trust.

[Rule 3 amended: Gazette 28 Jun 2011 p. 2554.]

4. Service of summons issued under r. 2 or 3

The persons to be served with the summons under rules 2 and 3 in the first instance shall be the following (that is to say) —

(a) where the summons is taken out by an executor or administrator or trustee —

(i) for the determination of any question, under rule 2(a), (e), (f), or (g), the persons, or one of the persons, whose rights or interests are sought to be affected;

(ii) for the determination of any question, under rule 2(b), any member or alleged member of the class;

(iii) for the determination of any question, under rule 2(c), any person interested in taking such accounts;

(iv) for the determination of any question, under rule 2(d), any person interested in such money;

(v) for relief under rule 3(a), the residuary beneficiaries, or next of kin, or some of them;

(vi) for relief under rule 3(b), the cestuis que trustent, or some of them;

(vii) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur;

(b) where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

[Rule 4 amended: Gazette 28 Jun 2011 p. 2554.]

5. Decision without judgment for administration

It shall not be obligatory on the Court to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

6. Orders which may be made on application for administration etc. of trusts

Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Court may, in addition to the powers already existing —

(a) order that the application shall stand over for a certain time and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper

statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;

(b) when necessary to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the judge in person.

7. Interference with discretion of trustee etc.

The issue of a summons under rule 2 shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

8. Conduct of sale of trust property

Where in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court shall otherwise direct.

[Heading deleted: Gazette 10 Jan 1975 p. 51.]

*[**9.** Deleted: Gazette 10 Jan 1975 p. 51.]*

Division 4 — Declaration on originating summons

[Heading inserted: Gazette 22 Feb 2008 p. 638.]

10. Construction of written instruments

Any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the

instrument, and for a declaration of the rights of the persons interested.

11. Construction or validity of legislation

(1) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of a statute, or of a regulation, rule, by-law or instrument made or purporting to be made under a statute, or of the validity of any such regulation, rule, by-law, or instrument, may apply by originating summons for the determination of such question of construction or validity, and for a declaration as to the right claimed.

(2) This rule is subject to any special statutory provision for the determination of any such matters.

12. Court may refuse to determine summons in some cases

The Court shall not be bound to determine any such question of construction if in the opinion of the Court it ought not to be determined on originating summons.

13. Effect of contracts for sale etc. of land

A vendor or purchaser of land or any interest in land or their personal representatives may apply to the Court by originating summons in respect of any requisitions or objections or any claim for compensation or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract) and the Court may make such order upon the application as to the Court may appear just, and may order how and by whom all or any of the costs of and incidental to the application are to be borne and paid.

Division 5 — General

[Heading inserted: Gazette 22 Feb 2008 p. 638.]

14. Form and issue of originating summons

(1) An originating summons must be in Form No. 74 or 75 as the case may require and must be prepared by the applicant or the applicant's solicitor.

(2) The party taking out an originating summons must be described as a plaintiff, and the other parties must be described as defendants.

(3) Issue of an originating summons takes place upon its being sealed with the seal of the Court.

[(4) deleted]

(5) An originating summons must be entitled in the matter of the Act (if any) and the section of the Act (if any), under which the application is made and of the estate or trust, or of the property, person or matters, to which or to whom it relates.

(6) Where appearance to an originating summons is not required, the summons must state the persons upon whom it is intended to be served, or that it is not intended to be served on any person.

[Rule 14 amended: SL 2020/242 r. 5(1)-(5).]

15. Order 7 applies to originating summons

Order 7 applies in relation to an originating summons as it applies in relation to a writ.

16. Time for appearance

Unless otherwise directed by the Court, the time to be limited for appearance to an originating summons to which an appearance is required to be entered shall be calculated in accordance with the table contained in Order 5 rule 11 as if the writ were an originating summons.

[Rule 16 inserted: Gazette 3 Oct 1975 p. 3769.]

17. Entry of appearance

(1) Except as otherwise provided, a party served with an originating summons must before he is heard enter an appearance and give notice thereof to the other parties.

(2) A party served with an originating summons may appear at any time before the hearing of the summons.

(3) If the party served appears at any time after the time limited by the summons for appearance he shall not, unless the Court otherwise orders, be entitled to any further time for any purpose, than if he had appeared according to the summons.

(4) The Court, if it sees fit so to do, may permit a party served with an originating summons to be heard on the summons although that party has not entered an appearance, on the undertaking of the solicitor of that party, or of the party himself, if he appears in person, to enter an appearance forthwith.

(5) The provisions of Order 12 apply, with the necessary modifications, in relation to an originating summons to which an appearance is required to be entered, as they apply in relation to a writ.

18. When appearance not required

A respondent shall not be required to enter an appearance to an originating summons —

(a) for the taxation and delivery of bills of costs or for the delivery by any solicitor of a cash account or deeds, documents or papers, or for a solicitor to pay money; or

[(b) deleted]

(c) under Order 17 for interpleader relief; or

(d) for an extension of time or for leave to institute an appeal or other proceeding; or

(e) to transfer an appeal or other proceeding from another court; or

(f) in any other case where it is so provided by these rules.

[Rule 18 amended: Gazette 13 Oct 1978 p. 3701; 20 Jun 1986 p. 2040; 13 Nov 2015 p. 4646.]

18A. Time for service where appearance not required

(1) Unless otherwise directed by the Court, the plaintiff must serve an originating summons to which an appearance is not required to be entered, and a copy of every affidavit in support thereof, at least 10 clear days before the return day of the summons.

(2) Where the originating summons is not heard on the return day, a further day and time for the hearing may be fixed on the application of the plaintiff or, the applicant, as the case may be.

[Rule 18A inserted: Gazette 3 Oct 1975 p. 3770.]

19. Fixing time for hearing summons

(1) Where any defendant served with an originating summons to which an appearance is required to be entered, has entered, or, within the time limited for appearing has failed to enter, an appearance, the plaintiff may, subject to the following subrules, obtain an appointment for the attendance of the parties for the hearing of the summons and a day and time must be fixed by a notice in Form 76 which must be sealed with the seal of the Court.

(2) The plaintiff must not apply for an appointment under subrule (1) unless —

(a) the plaintiff is ready to proceed; and

(b) as far as is known to the plaintiff, the matter is ready for hearing.

(3) Unless the Court orders otherwise, at least 14 days before the time fixed for the hearing of the originating summons, the

plaintiff must serve upon each defendant who has entered an appearance a copy of —

(a) the notice in Form 76; and

(b) each affidavit in support, not being an affidavit in reply to an affidavit filed by a defendant.

(4) If a plaintiff has not applied for an appointment under subrule (1) —

(a) a defendant who has entered an appearance may, with the leave of the Court, and on any terms that the Court may order, obtain an appointment for the hearing of the originating summons fixed by a notice in Form 76 which must be sealed with the seal of the Court; and

(b) a defendant who obtains an appointment under paragraph (a) must, unless the Court orders otherwise, at least 14 days before the time fixed for the hearing, serve a copy of the notice in Form 76 on the plaintiff and every other party who has entered an appearance.

[(5), (6) deleted]

[Rule 19 inserted: Gazette 3 Oct 1975 p. 3770; amended: Gazette 28 Jun 2011 p. 2552-3; 16 Aug 2017 p. 4416-17; SL 2020/242 r. 5(6) and (7).]

*[**20.** Deleted: Gazette 16 Aug 2017 p. 4417*

21. Evidence at hearing to be by affidavit

Unless the Court otherwise orders, evidence at the hearing of an originating summons shall be adduced by affidavit.

[Rule 21 inserted: Gazette 3 Oct 1975 p. 3770.]

22. Hearings in absence of party

(1) Where any party to an originating summons fails to attend at the first or any resumed hearing thereof, the Court may proceed in

his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the originating summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing an originating summons has proceeded in the absence of a party, then provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may rehear the originating summons.

(4) Where an application made by originating summons has been dismissed without a hearing by reason of the failure of the party who took out such summons to attend the hearing, the Court if satisfied that it is just to do so, may allow such summons to be restored to the list, and again brought on for hearing.

23. Order made *ex parte* may be set aside

The Court may set aside any order which has been made *ex parte*.

24. Costs thrown away by non-attendance of party

Where a proceeding in chambers fails by reason of the non-attendance of any party, and the Court does not think it expedient to proceed in his absence, the Court may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

[Rule 24 amended: Gazette 9 Nov 1973 p. 4165.]

25. Hearings not completed on hearing date

Where matters in respect of which an originating summons has been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further

summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

26. Other matters that may be included in one summons

In every cause or matter where any party thereto makes any application at chambers, either by way of originating summons, summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court, and upon the hearing of such application it shall be lawful for the Court to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Court thinks fit, be adjourned from chambers into court, or from court into chambers.

[Rule 26 amended: Gazette 9 Nov 1973 p. 4165.]

27. Directions as to hearings, evidence etc.

(1) If an originating summons is not disposed of altogether on the first hearing thereof, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to securing the just, expeditious, and economical disposal thereof.

(2) The Court shall, as early in the proceedings as appears to it to be practicable, consider whether there is or may be a dispute as to fact, and whether it is expedient to hear the summons on oral evidence or mainly on oral evidence, and if it thinks fit may order that no further affidavits shall be filed and that the summons shall be heard on oral evidence, or partly on oral evidence and partly on evidence by affidavit with or without cross-examination of any deponent, as it may direct.

28. Adjourning hearings

(1) The Court may from time to time adjourn the hearing of an originating summons, either generally or to a particular date, as

may appear to it to be appropriate, and the powers of the Court under rules 26 and 27 may be exercised at any resumed hearing.

(2) Where the hearing of an originating summons is adjourned generally, the party who obtained the appointment for the hearing, may bring the summons on for further hearing on 2 days' notice in writing to the registrar and to all the other parties, and any of those parties may bring the matter on with the leave of the Court.

(3) Notice under subrule (2) need not be given to a party who is in default as to appearance.

[Rule 28 amended: Gazette 3 Oct 1975 p. 3771; 28 Jun 2011 p. 2552.]

29. Court's powers and procedure at hearings

Upon every application by originating summons —

(a) the Court may direct such persons to be served with the summons or with a notice in lieu of service of the summons as it may think fit;

(b) the Court may appoint representative defendants;

(c) all persons served shall be entitled to adduce evidence either for or against the application;

(d) directions may be given as the Court thinks just for the trial of any questions arising out of the evidence;

(e) it shall be lawful for the Court upon such summons to pronounce such judgment as the nature of the case may require;

(f) the Court may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as it may think just.

30. *Transfer of Land Act 1893* s. 129C applications, directions as to

(1) Where on an application under section 129C of the *Transfer of Land Act 1893* inquiries or notices are pursuant to subsection (4) of that section directed to be made or given, the applicant or his solicitor shall after making the inquiries and giving the notices attend before a master on a day to be appointed by him and the master —

(a) shall ascertain whether the inquiries were duly made and what the results of the inquiries were and whether the notices were duly given in the manner and to the persons directed; and

(b) shall state the results of his inquiry in a certificate signed by him, and an order shall not be made on an application in which a direction is given pursuant to that subsection until a certificate in accordance with this paragraph has been obtained from the master and filed.

(2) Where it appears that the application will not be opposed, the master, if he is satisfied that all directions have been complied with, may proceed to deal with the application forthwith and without a certificate being given and filed.

[(3) deleted]

[Rule 30 inserted: Gazette 24 Jun 1977 p. 1914-15; amended: Gazette 30 Jul 1982 p. 2946; 30 Nov 1984 p. 3951; 13 Nov 2015 p. 4646.]

Order 59 — Applications and proceedings in chambers

1. Business to be dealt with in chambers

(1) The business to be disposed of in chambers shall consist of —

(a) applications for time to plead, for leave to amend pleadings, for discovery and inspection of documents, and generally all applications relating to the conduct of any cause or matter;

(b) subject to rule 2, civil proceedings commenced by originating summons;

(c) applications which by these rules or any Act may be heard in chambers;

(d) any application that may be made to the Court or a judge under a written law of the State or a law of the Commonwealth except —

(i) an appeal, or an application to review a decision; and

(ii) an application that the law says cannot be heard in chambers;

(e) applications for the leave of the Court;

(f) applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter;

(g) applications for the investment or change of investment of any funds in court;

(h) applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise;

(i) applications for interim and permanent investment and for payment of dividends under any Act, whereby the purchase money of any property sold is directed to be paid into court;

(j) applications on behalf of an infant where the infant is a ward of Court, or where the administration of the estate of an infant, or the maintenance of an infant, is under the direction of the Court;

(k) applications for the settlement of any property of any infant on marriage;

(l) applications as to the guardianship, custody, maintenance or advancement of infants;

(m) applications connected with the management of property;

(n) applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into court and investment of the purchase money;

(o) applications for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents, and papers;

(p) applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of the estate of an intestate, or for the distribution of a fund among creditors;

(q) such other matters as the judge may think fit to dispose of at chambers.

(2) All proceedings before a registrar are to be conducted in chambers unless a judge orders, or a written law provides, otherwise.

[Rule 1 amended: Gazette 28 Oct 1996 p. 5699; 21 Feb 2007 p. 562; 28 Jun 2011 p. 2555.]

2. Hearings may be in open court or chambers

(1) Where in any cause or matter commenced by originating summons it appears to the Court at any stage of the proceedings, that the proceedings should for any reason be heard in open

court, the Court may order that the hearing or further hearing of the proceedings shall be so held, and may give all necessary directions for the further conduct of the cause or matter.

(2) Proceedings commenced by originating summons which are brought on for hearing or further hearing in open court, may, if the Court thinks fit, be adjourned into chambers.

3. Applications in chambers

(1) If these rules do not require or authorise an application in chambers to be made in some other manner —

(a) an application to commence proceedings in chambers must be made by originating summons; and

(b) any other application in chambers must be made —

(i) if it is ex parte, by motion; or

(ii) in any other case, by summons.

[(2) deleted]

(3) An application in chambers shall state the orders that the applicant seeks and the grounds for the application.

(4) The Court may direct notice of a motion made *ex parte* to be served on any person the Court thinks fit.

[Rule 3 inserted: Gazette 28 Oct 1996 p. 5699-700; amended: Gazette 28 Jul 2010 p. 3467; 16 Aug 2017 p. 4417-18.]

4. Form and issue of summons

(1) A summons other than an originating summons must be in Form No. 77 and must be addressed to all the persons on whom it is to be served.

(2) A summons is issued by being sealed with the seal of the Court.

[(3) deleted]

(4) A summons must not be amended after issue except with the leave of the Court.

[Rule 4 amended: SL 2020/242 r. 6.]

5. Summons, service of

(1) Subject to subrule (2) a summons (other than an originating summons) must be served 7 days before the return day of the summons, unless the Court or these rules allow a shorter period of service.

(2) A summons asking only for the extension or abridgement of any period of time may be served on the day previous to its return.

(3) Unless the Court otherwise orders —

(a) an affidavit in opposition to a summons must be filed and a copy served upon the applicant not less than 2 days before the return day of the summons; and

(b) a party who wishes to bring on for further hearing a summons that has been adjourned must give 2 days' written notice to the registrar and to all other parties.

[Rule 5 amended: Gazette 3 Oct 1975 p. 3771; 28 Jun 2011 p. 2552.]

6. Experts, assistance of

(1) The Court may, if it thinks it expedient in order to enable it the better to determine any matter arising in any proceedings in chambers, obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

(2) The Court may make such order as to the costs of obtaining such assistance as it shall think fit.

7. Application of O. 58 r. 22 to 28

Order 58 rules 22 to 28, with any necessary changes, apply in relation to an application in chambers under this Order in the

same way as they apply to an application made by originating summons.

[Rule 7 inserted: Gazette 28 Oct 1996 p. 5700.]

8. Stay of proceedings, ordering

A judge may, if under special circumstances he thinks fit, order that a summons shall operate as a stay of proceedings from the time of service of the summons, and the summons shall be drawn up accordingly and shall be signed by the judge.

9. Parties to confer before making application

(1) No order shall be made on an application in chambers unless the application was filed with a memorandum stating —

(a) that the parties have conferred to try to resolve the matters giving rise to the application; and

(b) the matters that remain in issue between the parties.

(2) The Court may waive the operation of subrule (1) in a case of urgency or for other good reason.

[Rule 9 inserted: Gazette 28 Oct 1996 p. 5700; amended: Gazette 28 Jun 2011 p. 2552.]

10. Orders, form of

(1) Subject to subrule (2), an order shall be in accordance with Form No. 78 or with such other form as is applicable in the circumstances, and shall be prepared by the party entitled to the order.

(2) Notwithstanding the provisions of the prescribed forms, it shall not be necessary for an order to recite any affidavit filed in support of the summons on which the order is made.

[Rule 10 inserted: Gazette 10 Jan 1975 p. 51; amended: Gazette 28 Jun 2011 p. 2552.]

Order 60 — Masters' jurisdiction

[Heading inserted: Gazette 21 Feb 2007 p. 562.]

1. Masters' general jurisdiction

(1) A master has the same jurisdiction that a judge sitting in chambers has under the *Supreme Court Act 1935* or these rules, unless it is expressly stated otherwise.

(2) A master has jurisdiction to hear and determine any action, application or proceeding that the Chief Justice directs is to be heard and determined by a master, even if it cannot be heard and determined by a judge sitting in chambers.

(3) Despite subrules (1) and (2) a master does not have jurisdiction in respect of any of the following —

(a) proceedings relating to the liberty of a person including seeking a writ of *habeas corpus ad subjiciendum* under Order 57;

(b) proceedings for contempt of court;

(c) proceedings seeking judicial review under Order 56, other than proceedings relating to the adjudication or purported adjudication of a payment dispute under the *Construction Contracts Act 2004* Part 3;

(d) proceedings seeking a review order under the *Magistrates Court Act 2004* section 36;

(e) proceedings seeking leave to appeal;

(f) proceedings under a written law, other than these rules, that must be heard and determined by a judge;

(g) proceedings under Order 65C.

(4) Despite subrule (3), a master has jurisdiction to hear and determine any proceeding, not otherwise within a master's jurisdiction —

(a) if the parties to the proceeding consent; or

(b) if the terms of any order made in the proceeding are agreed between the parties to the proceeding,

but a party's failure to seek or give consent does not prejudice the party's right to costs on a summons before a judge.

(5) For the purposes of any proceedings before him or her, a master may exercise the powers of the Court under the *Evidence Act 1906* section 16(1)(b), 51 or 52.

(6) For the purposes of any proceedings before him or her, a master has the same jurisdiction as a judge would have if the proceedings were before a judge.

(7) For the purpose of any proceedings before a master, these rules apply to and in respect of any person who is summoned to appear or who appears in the proceedings as if the proceedings were before a judge.

[Rule 1 inserted: Gazette 21 Feb 2007 p. 562-3; amended: Gazette 13 Nov 2015 p. 4646.]

2. Master may refer matter to judge or Court of Appeal

(1) A master may refer an application or proceeding to a judge or the Court of Appeal for determination and may make an order pending the determination.

(2) The power in subrule (1) may be exercised by a master —

(a) on his or her own initiative;

(b) in the absence of the parties;

(c) before the hearing date of the application or proceeding.

(3) The judge or Court of Appeal may hear and determine the application or proceeding or may refer it back to the master with or without directions.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 563.]

Order 60A — Jurisdiction of registrars and appeals from registrars' decisions

[Heading inserted: Gazette 28 Oct 1996 p. 5701.]

1. Registrars' general jurisdiction

(1) A registrar may exercise these powers of the Court —

[(aa) deleted]

(a) under Order 42 rule 8, to obtain the consent of a defendant in person;

(b) under Order 67B, the Court's powers in relation to access to information, records and other things;

[(c)-(d) deleted]

(e) under Part 5.9 Division 1 of the *Corporations Act 2001* of the Commonwealth to conduct an examination ordered by the Court but, in doing so, not to exercise a power referred to in Order 81G rule 74;

(f) under Part 5 Division 2 of the *Criminal Property Confiscation Act 2000* to conduct an examination ordered by the court under section 58 of that Act.

[(2) deleted]

[Rule 1 inserted: Gazette 28 Oct 1996 p. 5701; amended: Gazette 16 Jul 1999 p. 3194; 23 Jan 2001 p. 562; 27 Sep 2002 p. 4829; 21 May 2004 p. 1712; 13 Nov 2015 p. 4646-7; 16 Nov 2016 p. 5199; 16 Aug 2017 p. 4418; 27 Feb 2018 p. 572.]

2. Registrars' jurisdiction with respect to case management

(1) For the purposes of Order 4A, a registrar has, in relation to a case for which the registrar is the case manager, the same jurisdiction that a judge sitting in chambers would have under

the *Supreme Court Act 1935* or these rules if a judge were the case manager.

(2) However, a registrar does not have jurisdiction under subrule (1) in respect of any of the following —

(a) proceedings to which any of the following applies —

(i) Order 51 (Receivers);

(ii) Order 52 (Interlocutory injunctions, interim preservation of property);

(iii) Order 52A (Freezing orders);

(iv) Order 52B (Search orders);

(v) Order 61 (Proceedings under judgments and orders);

(vi) Order 70 rule 7 (removal of next friend or guardian *ad litem*);

(vii) Order 70 rule 10 (approval of settlement, compromise or acceptance of money paid into court);

(viii) Order 70 rule 11 (approval of agreement for settlement or compromise);

(ix) Order 70 rule 12 (control of money recovered for person under disability);

(x) the *Supreme Court (Arbitration) Rules 2016*;

(b) proceedings referred to in Order 60 rule 1(3);

(c) a review of the taxation of costs under Order 66 rule 55;

(d) proceedings under any of the following —

(i) the *Transfer of Land Act 1893*;

(ii) the *Trustees Act 1962*;

(iii) the *Australian Securities and Investments Commission Act 2001* (Commonwealth);

(iv) the *Corporations Act 2001* (Commonwealth);

(v) the *Cross-Border Insolvency Act 2008* (Commonwealth).

(3) Subrule (2) does not apply to or in relation to a matter that is referred to a registrar by a judge or master.

(4) A registrar cannot order the attachment or committal of any person.

(5) An interlocutory order or case management direction made by a registrar is not enforceable by a writ of attachment or order of committal.

[Rule 2 inserted: Gazette 13 Nov 2015 p. 4647-8; amended: Gazette 20 Dec 2016 p. 5842; 16 Aug 2017 p. 4418.]

2A. Registrars to deal with applications within their jurisdiction

If an application made to the Court requests the exercise of jurisdiction or a power of the Court that under this Order is exercisable by a registrar, the application must be dealt with by a registrar unless —

(a) under rule 3 the proceedings have been referred to a judge or master; or

(b) a judge, master or registrar has granted leave for the application to be dealt with by a judge or master.

[Rule 2A inserted: Gazette 27 Feb 2018 p. 573.]

3. Registrar may refer proceedings to judge or master

(1) A registrar may refer any proceedings before him or her to a judge or master.

(2) The judge or master may deal with the proceedings or refer them back to the registrar with or without directions.

(3) Pending the determination of the proceedings by the judge or master, the registrar may make an interim order.

[Rule 3 inserted: Gazette 13 Nov 2015 p. 4648.]

4. Appeals from decisions of registrars

(1) A party who is dissatisfied with an order or decision of a registrar may appeal from it.

(2) The appeal must be made to a judge, but a judge may order that it be heard by a master.

(3) This rule does not apply to an order or decision of a registrar —

(a) made or given in relation to a cause, matter, question or issue referred to or tried by the registrar under section 50 or 51 of the Act; or

(b) made or given in proceedings to which Order 61 applies; or

(c) when acting as a taxing officer; or

(d) made under Order 67A; or

(e) to which Order 67B rule 17 applies.

[Rule 4 inserted: Gazette 13 Nov 2015 p. 4648; amended: Gazette 27 Feb 2018 p. 573.]

5. Appeal procedure

(1) An appeal from the decision of a registrar must be commenced within 10 days after the date of the order or decision appealed against or any longer period allowed by a judge or master.

(2) The appeal must be commenced and proceed on the file in which the action was commenced.

(3) The appeal must be commenced by filing an appeal notice in Form 80A, stating the following —

(a) the order or direction appealed against;

(b) briefly, but specifically, the grounds of the appeal;

(c) the order or directions sought at the appeal;

(d) any directions considered necessary to facilitate the hearing of the appeal;

(e) for the period of 32 days beginning on the 14th day after the date of the filing of the appeal notice, any days within that period on which the appellant will be unavailable to attend the hearing of the appeal.

(4) No appeal books are required for the appeal.

(5) Within one day after filing an appeal notice under this rule a copy of it must be served on the other parties.

[Rule 5 inserted: Gazette 13 Nov 2015 p. 4648-9.]

6A. Other parties to appeal to advise certain matters

Each party on whom an appeal notice is served under rule 5(5) must, within 3 days after the date of service on them, advise the party who filed the appeal notice and the Court, in writing, of —

(a) any directions that the party considers necessary to facilitate the appeal; and

(b) for the period of 32 days beginning on the 14th day after the date of service of the appeal notice, any days within that period on which the party will be unavailable to attend the hearing of the appeal.

[Rule 6A inserted: Gazette 13 Nov 2015 p. 4649.]

6. Appeal is by way of new hearing

An appeal from a registrar is to be by way of a new hearing of the matter that was before the registrar.

[Rule 6 inserted: Gazette 13 Nov 2015 p. 4649.]

7. This Order not to apply to Court of Appeal Registrar

This Order does not apply to or in respect of the Court of Appeal Registrar or any decision made by that registrar.

[Rule 7 inserted: Gazette 29 Apr 2005 p. 1792.]

Order 61 — Proceedings under judgments and orders

Division 1 — Application of order

[Heading inserted: Gazette 22 Feb 2008 p. 638.]

1. Application to proceedings under orders

This Order applies with the necessary modifications to proceedings under an order as it applies in relation to proceedings under a judgment, and references therein to a judgment include references to an order; but this Order does not apply to a question or issue of fact in a cause or matter.

[Rule 1 amended: Gazette 2 Jul 1982 p. 2317.]

Division 2 — Summons to proceed

[Heading inserted: Gazette 22 Feb 2008 p. 639.]

2. Summons to proceed, requirement for and proceedings on

(1) Where in order to carry out any directions contained in a judgment given in any cause or matter it is necessary to proceed in chambers under the judgment, the party entitled to prosecute the judgment must, within 10 days after entry of the judgment, take out a summons to proceed under the judgment.

(2) If the party entitled to prosecute the judgment fails to comply with subrule (1) any other party to the cause or matter shall thereupon, unless the Court otherwise directs, become entitled to prosecute the judgment.

(3) On the return of the summons to proceed the Court shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to —

(a) the manner in which any account or inquiry is to be prosecuted; and

(b) the evidence to be adduced in support thereof; and

(c) the parties who are required to attend all or any part of the proceedings; and

(d) the time within which each proceeding is to be taken,

and the Court may fix a day or days for the further attendance of the parties.

(4) The Court may revoke or vary any directions given under this rule.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2552.]

3. Notice of judgment, Court may order service of in some cases

(1) Where in any cause or matter the Court has tried or determined any issue relating to —

(a) the administration of the estate of a deceased person; or

(b) the execution of any trust; or

(c) any transaction or proposed transaction relating to property,

and has given or proposes to give, a judgment which appears to affect the rights or interests of persons not parties to the action, or directs any account to be taken or inquiry made, the Court may, when giving judgment, or directing that the minutes of the proposed judgment stand for further consideration, or at any stage of the proceedings under the judgment, direct that notice of the judgment or proposed judgment be served on any person interested in the estate, or under the trust, or in the property, as the case may be.

(2) Any person duly served with notice of a judgment or proposed judgment in accordance with this rule shall, subject to subrule (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the cause or matter.

(3) The notice of a judgment or proposed judgment to be served pursuant to subrule (1) must be indorsed with a memorandum in Form No. 80.

(4) Where the Court dispenses with service of a notice on any person it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly, except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) A person served with notice of a judgment or proposed judgment may within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge the notice to him or to discharge, vary, or add to the judgment.

(6) A person served with notice of a judgment or proposed judgment may, after entering an appearance to the notice, attend the proceedings in the same manner and subject to the same provisions as a defendant entering an appearance.

(7) Order 12 rules 1 to 4 shall apply in relation to the entry of an appearance to a notice of judgment or proposed judgment as if the notice were a writ and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

[Rule 3 amended: Gazette 28 Jun 2011 p. 2552.]

4. Settling deed if parties differ, procedure for

Where by a judgment a deed is directed to be settled by the judge in chambers or by the master, in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within

8 days, or within such period as a judge may direct, after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of 8 days.

5. When service of notice of judgment may be dispensed with

Where, upon the hearing of the summons to proceed, it appears to the judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment upon any party cannot be made or ought to be dispensed with, the judge may, if he shall think fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such service.

6. Judgment for accounts etc., power to bind persons in some cases

Where service of notice of a judgment for accounts and inquiries is dispensed with, the judge in person may, if he thinks fit, order that the persons as to whom service is dispensed with, shall be bound as if served, and they shall be bound accordingly, except where the judgment has been obtained by fraud or non-disclosure of material facts.

7. Procedure where some parties not served etc.

If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment, directions may be given for advertisement for creditors, and for leaving the accounts in chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served, and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

8. Course of proceedings in chambers

The course of proceeding in chambers shall ordinarily be the same as the course of proceeding in court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the judge, and where so directed, copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in unless the judge shall otherwise direct.

Division 3 — Attendances

[Heading inserted: Gazette 22 Feb 2008 p. 639.]

9. Classifying interests of parties

(1) Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment, it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings before him.

(2) Where any one of the parties constituting such class declines to authorise the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated.

10. Judge may require distinct solicitor to represent parties

Whenever in any proceeding before a judge in chambers the same solicitor is employed for 2 or more parties, such judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented.

11. Attendance of parties not directed to attend

Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

12. Order stating parties directed to attend

An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense, and such order is to be recited in the master's certificate.

Division 4 — Claims of creditors and other claimants

[Heading inserted: Gazette 22 Feb 2008 p. 639.]

13. Advertisements for creditors etc., power to direct

Where a judgment is given, whether in Court or in chambers directing an account of debts, claims or liabilities, or an inquiry for heirs, next of kin or other unascertained persons, the judge or the master may direct an advertisement for creditors or other claimants to be issued, and in deciding whether to do so shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.

14. Advertisements, preparation etc. of

Every such advertisement shall be prepared by the party prosecuting the judgment, and —

(a) in the case of an advertisement for creditors shall be signed by the party's solicitor, or, if he has no solicitor, by the master; and

(b) in the case of an advertisement for other claimants, shall be submitted to the master and, if approved by the master, shall be signed by him,

and such signature shall be sufficient authority to the printer of the *Government Gazette* to print the same.

15. Advertisements, contents of

(1) The Court shall fix the time within which, and the person to whom each claimant is to send his name and address and full particulars of his claim, and that time and the name and address of that person must be stated in the advertisement.

(2) Such advertisement must be in one of the Forms Nos. 81 and 82 with such variations as the circumstances of the case may require.

15A. Claims to state claimant's contact details

A claim made under this Order by a claimant must, in accordance with Order 71A, state —

(a) the claimant's geographical address; and

(b) the claimant's service details.

[Rule 15A inserted: Gazette 21 Feb 2007 p. 564.]

16. Failure to claim within specified time

A claimant who does not send full particulars of his claim to the person named in the advertisement within the time therein specified shall not be entitled to prove his claim except with the

leave of the Court, and in granting such leave the Court may impose such terms as to costs and otherwise as it thinks just.

17. Examination and verification of claims

(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must —

(a) examine the claims of persons claiming to be creditors of the estate and determine, as far as he is able, to which of such claims the estate is liable; and

(b) at least 7 clear days before the time appointed for adjudicating on claims make an affidavit verifying lists of —

(i) claims sent in pursuance of any advertisement; and

(ii) claims received by any of the personal representatives otherwise than in pursuance of an advertisement; and

(iii) debts of the deceased at the time of his death in respect of which no claim has been received, but which are or may still be due and which have come to the knowledge of any of the personal representatives.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must —

(a) examine the claims and determine, so far as he is able, which of them are valid claims; and

(b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of —

(i) claims sent in pursuance of any advertisement; and

(ii) claims received by any of the personal representatives or trustees, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

(3) The affidavit referred to in subrules (1) or (2) must, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed in whole or in part, and in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.

(4) Where the personal representatives or trustees are not the parties directed by the Court to examine claims they must join with the party directed to examine them in making the affidavit required by this rule.

[Rule 17 amended: Gazette 28 Jun 2011 p. 2552-3.]

18. Adjudicating on claims

(1) When adjudicating on the claims the Court —

(a) may allow any of such claims without proof thereof;

(b) may direct all or any of such claims to be investigated in such manner as it thinks fit;

(c) may require any claimant to attend and prove his claim or to furnish further particulars, information or evidence of it.

(2) Where the Court exercises the power conferred on it by subrule (1)(c) in relation to any claimant such party as the Court may direct must serve on that claimant a notice requiring him —

(a) to file an affidavit in support of his claim within such time, being not less than 7 days after service of the notice, as may be specified in the notice, and to attend

before the Court for adjudication on the claim at such time as may be specified in such notice; or

(b) to file at such time as may be so specified such documents in support of his claim as may be so specified or described.

(3) If a claimant does not comply with a notice served on him under subrule (2) his claim may be disallowed.

(4) A claimant who files an affidavit in compliance with a notice served on him under subrule (2) must serve notice of the filing on the party by whom the first-mentioned notice was served.

(5) A person claiming to be a creditor need not make an affidavit or attend in support of the claim, unless the person has been served with a notice under subrule (2)(a).

(6) Unless the Court otherwise directs, a person claiming to be a secured creditor must file evidence of the security interest claimed.

(7) In this rule references to a claim include references to a part of a claim.

[Rule 18 amended: Gazette 28 Jun 2011 p. 2552; 27 Feb 2018 p. 573-4.]

19. Adjourning adjudications; fixing time for filing evidence etc.

Where upon the day appointed for adjudicating upon the claims, any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

20. Service of notice of judgment on certain claimants

(1) Where a claimant other than a creditor has established his claim then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise

directs, the party having the conduct of the cause or matter must serve notice of the judgment on him.

(2) A person duly served with notice of a judgment under this rule shall, subject to rule 3(5) as applied by subrule (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(3) Where the Court directs under subrule (1) that notice of a judgment shall not be served on a person, the Court may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and unless the judgment has been obtained by fraud or non-disclosure of material facts, he shall be bound accordingly.

(4) Rule 3(5), (6) and (7) apply in relation to a person served with notice of a judgment under this rule as they apply in relation to a person served with notice of a judgment under that rule.

[Rule 20 amended: Gazette 28 Jun 2011 p. 2552.]

21. Notice of claims allowed or disallowed

(1) Such party as the Court may direct must serve on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of such allowance or disallowance.

(2) Such party as the Court shall direct must make out a list of the creditors' claims, and a list of any other claims, allowed and file it.

[Rule 21 amended: Gazette 30 Nov 1984 p. 3954; 27 Feb 2018 p. 574.]

*[**22.** Deleted: Gazette 21 Feb 2007 p. 564.]*

Division 5 — Interest

[Heading inserted: Gazette 22 Feb 2008 p. 639.]

23. Interest on debts

(1) Where a judgment directs an account of the debts of a deceased person then, unless the Court otherwise orders, interest shall be allowed —

(a) on any such debt as carries interest, at the rate it carries; and

(b) on any other debt, at the rate of 5% per annum from the date of the judgment.

(2) A creditor who has established his debt under the judgment, and whose debt does not carry interest, shall be entitled to interest upon his debt at the rate of 5% per annum from the date of the judgment out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest on such of those debts as by law carry interest.

24. Interest on legacies

Where a judgment directs an account of legacies then, subject to any directions contained in the will or codicil in question, and to any order made by the Court, interest shall be allowed on each legacy at the rate of 5% per annum beginning at the expiration of one year after the death of the testator.

Division 6 — Masters' and registrars' certificates

[Heading inserted: Gazette 22 Feb 2008 p. 639.]

25. Master's certificate

(1) The result of proceedings before a master under a judgment shall be stated in a certificate signed by the master.

(2) The certificate of the master shall refer to so much of the judgment, to such documents or parts thereof, and to such of the

evidence as will make it clear upon what the result stated in the certificate is founded.

(3) Where the judgment requires the taking of an account the certificate must state the result of the account, and not set the same out by way of schedule, but must refer to the account verified by filed affidavit, and must specify by reference to the numbered items in the account which, if any, of such items have been disallowed, or varied, and the additions, if any, which have been made by way of surcharge or otherwise.

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in subrule (3) to the account so verified shall be construed as a reference to the fresh account.

[Rule 25 amended: Gazette 30 Nov 1984 p. 3952; 28 Jun 2011 p. 2552.]

26. Settling and filing master's certificate

(1) A draft of the master's certificate shall be drawn up in the master's chambers unless the master directs that it be drawn up by a party to the proceedings.

(2) The draft shall be settled by the parties before the master on an appointment given by him for such purpose.

(3) The certificate signed by the master and any account referred to therein shall be sent by the master to the Central Office and filed there.

27. Judge may determine questions in proceedings before master

(1) Any party may, before the proceedings before the master are concluded, apply to the judge for the determination of any question arising in the course of the proceedings.

(2) Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under subrule (1).

(3) The order or directions made or given by the judge on the determination of such question need not be drawn up, except in the event of an appeal to the Court of Appeal, but the master shall refer to such order or directions in his certificate under rule 25.

(4) If the judge so directs or is not available, the question may be determined by any judge who is for the time being sitting in chambers.

[Rule 27 amended: Gazette 29 Apr 2005 p. 1795; 28 Jun 2011 p. 2552.]

28. Appeal against master's certificate

(1) Where proceedings under a judgment have been heard by a master, a party to the proceedings may, not later than —

(a) 21 days after the filing of the master's certificate therein; or

(b) if the certificate is to be acted upon by the Accountant without further order, 2 clear days after the filing thereof,

appeal to the Court of Appeal which may vary or discharge the certificate.

(2) An appeal under subrule (1) must be commenced and conducted in accordance with the *Supreme Court (Court of Appeal) Rules 2005*.

(3) If the master's certificate is to be acted upon by the Accountant, a copy of the appeal notice filed under the *Supreme Court (Court of Appeal) Rules 2005* must be served on the Accountant as soon as practicable after it is filed.

[Rule 28 inserted: Gazette 2 Jul 1982 p. 2317; amended: Gazette 30 Nov 1984 p. 3952; 29 Apr 2005 p. 1792-3.]

28A. Judge may discharge or vary registrar's certificate

(1) Where proceedings under a judgment have been heard by a registrar, a party to the proceedings may, not later than —

(a) 8 clear days after the filing of the registrar's certificate therein; or

(b) if the certificate is to be acted upon by the Accountant without further order, or is a certificate passing a receiver's account, 2 clear days after the filing thereof,

apply by summons for an order of a judge discharging or varying the certificate.

(2) A copy of a summons to discharge or vary a certificate to be acted upon by the Accountant without further order must be served on the Accountant as soon as practicable after the issue thereof.

(3) Subject to subrule (4) the registrar's certificate shall, upon the expiry of the period specified in relation to it in subrule (1) be binding on the parties to the proceedings unless discharged or varied by order under subrule (1).

(4) A judge may, in special circumstances, upon application by summons or motion, by order discharge or vary the certificate of a registrar, notwithstanding that the certificate has become binding on the parties.

[Rule 28A inserted: Gazette 2 Jul 1982 p. 2317; amended: Gazette 28 Jun 2011 p. 2552.]

Division 7 — Further consideration

[Heading inserted: Gazette 22 Feb 2008 p. 639.]

29. Summons to have matter in chambers further considered

(1) Where any matter originating in chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in chambers, such matter may, after the expiration

of 8 days and within 14 days from the filing of the master's certificate, be brought on for further consideration by a summons, to be taken out by the party having the conduct of the matter, and after the expiration of such 14 days by a summons, to be taken out by any other party. Such summons shall be in the form following: — "That this matter, the further consideration whereof was adjourned by the order of the ..... day of ..... 20..... , may be further considered," and shall be served 6 clear days before the return.

(2) This rule does not apply to any matter the further consideration whereof is, at the original or any subsequent hearing, adjourned into court.

Order 62 — *Trustees Act 1962* rules

[Heading inserted: Gazette 22 Feb 2008 p. 640.]

1. Making applications under Act

(1) Subject to subrule (2) and these rules, applications under the *Trustees Act 1962* (in this Order referred to as the ***said Act***) shall be made by originating summons or originating motion.

(2) Such applications under the said Act as the Chief Justice may from time to time direct as being proper to be made by summons, may be made by summons.

(3) The Chief Justice may vary or revoke any direction given under subrule (2).

[Rule 1 amended: Gazette 15 Jun 1973 p. 2249; 28 Jun 2011 p. 2552.]

2. Title of proceedings

All applications under the said Act not made in any pending cause or matter, must be entitled in the matter of the said Act, and in the matter of the trust, described so as to identify it.

3. Payment into court under Act s. 99

A trustee wishing to pay money or securities into court under section 99 of the said Act, must make and file an affidavit entitled in the manner specified in rule 2, setting out —

(a) a short description of the trust and of the instrument creating it, or, as the case may be, of the circumstances in which the trust arose; and

(b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him; and

(c) his submission to answer all such inquiries relating to the application of the money or securities paid into court, as the Court may make or direct; and

(d) in accordance with Order 71A —

(i) the trustee's geographical address; and

(ii) the trustee's service details.

[Rule 3 amended: Gazette 21 Feb 2007 p. 564.]

4. Notice of payment in etc.

The person who has made the payment into court under the said Act must forthwith give notice thereof by pre-paid letter through the post, to the several persons whose names and addresses are stated in his affidavit as interested in or entitled to the moneys or securities paid into court.

5. Applications in respect of money etc. paid into court

(1) A summons relating to money or securities paid into court under the said Act or the dividends of them must, in accordance with Order 71A, state —

(a) the applicant's geographical address; and

(b) the applicant's service details.

(2) Any application in respect of money or securities paid into court under the said Act must, unless otherwise directed by the Court, be served on the trustee, and on the person named in his affidavit as interested in or entitled to the same, and on such other persons as the Court may direct.

[Rule 5 amended: Gazette 21 Feb 2007 p. 564.]

[Order 62A (r. 1-5) deleted: Gazette 16 Nov 2016 p. 5199.]

[Orders 63, 63A and 64 deleted: Gazette 29 Apr 2005 p. 1793.]

Order 65 — Appeals to the General Division

[Heading inserted: Gazette 21 Feb 2007 p. 564.]

Division 1 — Preliminary matters

[Heading inserted: Gazette 21 Feb 2007 p. 564.]

1. Terms used

In this Order, unless the contrary intention appears —

appeal means an appeal or application to which this Order applies;

appeal notice means a notice in the form of Form No. 83;

concluded, in relation to an appeal, means decided, dismissed or discontinued;

interim order in an appeal, means —

(a) an order staying the proceedings in the primary court or the execution of the primary court's decision;

(b) an urgent appeal order;

(c) an order that an appellant provide security for a respondent's costs;

(d) an order extending or shortening the time for obeying a requirement of these rules, other than the time for commencing an appeal;

(e) any other order that the Court may make before the appeal is concluded, other than an order giving or refusing to give leave to appeal;

primary court, in relation to an appeal, means the court, tribunal, body or person that made the decision being appealed;

primary court's transcript means —

(a) the transcript of the proceedings in the primary court; or

(b) if there is no electronic recording of the proceedings that can be transcribed —

(i) the notes made by the judicial officer who presided at the proceedings; and

(ii) one or more affidavits of people who were present at the proceedings about what happened in the proceedings.

[Rule 1 inserted: Gazette 21 Feb 2007 p. 564-5.]

2. Application of this Order

(1) This Order applies to any appeal, or application for leave to appeal, that may be made to the General Division of the Court, other than an appeal under the *Criminal Appeals Act 2004* Part 2.

(2) In respect of an appeal, or application for leave to appeal, to which this Order applies, this Order is subject to the written law under which the appeal or application is made.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 565.]

Division 2 — General matters

[Heading inserted: Gazette 21 Feb 2007 p. 565.]

3. Hearings by telephone

(1) A judge may conduct a hearing with one or more of the parties to an appeal by telephone.

(2) A hearing conducted by telephone is to be taken to be a hearing in the presence of the judge.

(3) A registrar must confirm in writing any order made at such a hearing.

[Rule 3 inserted: Gazette 21 Feb 2007 p. 565-6.]

4. Judge's general jurisdiction

(1) For the purposes of dealing with an appeal, a judge has jurisdiction to make any order that the judge considers will or may facilitate the appeal being conducted and concluded efficiently, economically and expeditiously.

(2) Without limiting subrule (1), a judge has jurisdiction —

(a) to make a decision on the judge's own initiative or on an application by a party;

(b) to decide an application on the basis of the documents filed and without listing it for hearing;

(c) to make a decision on the judge's own initiative on the basis of the documents filed and without requiring the parties to attend a hearing;

(d) to hear and decide any application made during the appeal in the absence of any party other than the applicant;

(e) to hear and decide the appeal in the absence of any party other than the applicant;

(f) to order some or all of the parties to do one or more of the following in respect of the appeal, or any aspect of it specified by the judge —

(i) to file, before a date set by the judge, any document specified by the judge;

(ii) to appear and make oral submissions on a date set by the judge;

(g) to order a party to file and serve an appeal book;

(h) to order any or all of the parties to file and serve —

(i) written submissions;

(ii) a chronology of events relevant to the appeal;

(iii) a list of the principal legal authorities on which the party relies;

(i) to limit the time a party has to make oral submissions at a hearing before a judge.

(3) If a judge makes a decision on the basis of the documents filed without requiring the parties to attend a hearing, rule 7 applies.

[Rule 4 inserted: Gazette 21 Feb 2007 p. 566; amended: Gazette 22 Feb 2008 p. 640.]

5. Non-attendance by party, consequences of

(1) If a hearing before a judge is adjourned because a party who has been notified of it does not attend, the judge may order the party or the party's lawyer to pay the costs of any party who attended.

(2) If a party who has been notified of a hearing does not attend the hearing before a judge, the judge may proceed in the party's absence.

[Rule 5 inserted: Gazette 21 Feb 2007 p. 567.]

6. Decisions made in absence of party

(1) If in a party's absence a judge makes an order, whether or not at a hearing, the judge may subsequently, but before the order is carried out, set aside the order and again deal with the matter that gave rise to the order.

(2) If in a party's absence a judge makes a decision in an appeal, whether or not at a hearing, a registrar must notify the party of the decision.

[Rule 6 inserted: Gazette 21 Feb 2007 p. 567.]

7. Decisions made on the papers

(1) This rule applies if another rule in this Order says it applies.

(2) If a decision is made under the other rule on the basis of the documents filed without requiring the parties to attend a hearing (the ***provisional decision***), a registrar must serve the parties with written notice of the provisional decision.

(3) If a party wants a hearing of the matter that gave rise to the provisional decision, the party must file a Form No. 88 (Request for a hearing) within 5 working days after the date on which the party is served with the notice of the provisional decision.

(4) If no party files a Form No. 88 under subrule (3), the provisional decision becomes the final decision on the matter.

(5) If any party files a Form No. 88 under subrule (3), a registrar must list the matter for hearing by the judge who made the provisional decision or, if he or she is absent, before another, and notify the parties.

(6) At the hearing the provisional decision may be confirmed, amended or set aside.

(7) The decision made at the hearing is the final decision on the matter.

(8) Any right to appeal against, or to make an application as a result of or in respect of, a final decision on a matter cannot be exercised in relation to a provisional decision until it becomes a final decision.

[Rule 7 inserted: Gazette 21 Feb 2007 p. 567.]

Division 3 — Procedure on appeals

[Heading inserted: Gazette 21 Feb 2007 p. 568.]

8. Nature of appeals

An appeal will be by way of rehearing unless another written law provides otherwise.

[Rule 8 inserted: Gazette 21 Feb 2007 p. 568.]

9. Time for appealing

An appeal against a decision must be commenced within 21 days after the date of the decision.

[Rule 9 inserted: Gazette 21 Feb 2007 p. 568.]

10. Appeal, how to commence

(1) To —

(a) commence an appeal within time; or

(b) apply for an extension of time within which to commence an appeal,

the appellant must file —

(c) a Form No. 83 (Appeal notice) that sets out the grounds for the appeal in accordance with subrule (2); and

(d) any document required by subrule (3) or (4); and

(e) a copy of the relevant records filed with the primary court in respect of the case in which the decision being appealed was made; and

(f) a copy of the primary court's transcript; and

(g) a copy of every other record that the Court will need to decide the appeal.

(2) The grounds of appeal must not merely allege —

(a) that the primary court erred in fact or in law; or

(b) that the primary court's decision is against the evidence or the weight of evidence or is unreasonable and cannot be supported having regard to the evidence; or

(c) that the primary court's decision is unsafe or unsatisfactory.

(3) If the Form No. 83 says that an extension of time within which to commence the appeal is needed, the form must be filed with an affidavit by the applicant or the applicant's lawyer or both explaining why the appeal was not commenced within time.

(4) A Form No. 83 may be filed together with an application, made in accordance with rule 13, for an interim order.

(5) If an appellant requires leave to appeal, a Form No. 83 filed in accordance with this rule is to be taken to be an application for leave to appeal.

(6) Any document filed under this rule must be served on the respondent.

(7) As soon as practicable after serving the respondent the appellant must file a Form No. 84 (Service certificate).

[Rule 10 inserted: Gazette 21 Feb 2007 p. 568-9.]

11. Primary court to be notified and to supply records

(1) In this rule —

primary court case means the case in the primary court.

(2) As soon as practicable after an appeal notice is filed, a registrar must give the primary court concerned —

(a) a copy of the appeal notice; and

(b) a notice that specifies —

(i) the records or things held by the primary court in relation to the primary court case that the primary court must give to the Court for the purposes of the appeal; and

(ii) the date by which the primary court must provide the records or things.

(3) Any copy of a document given by the primary court to the Court need not be certified by the primary court.

(4) If any record given to the Court contains information to which access by any person is or should be restricted, the primary court must advise the Court.

[Rule 11 inserted: Gazette 21 Feb 2007 p. 569.]

12. Respondent's options

(1) On being served with an appeal notice, a respondent may file a Form No. 85 (Notice of respondent's intention).

(2) If the respondent files a Form No. 85, it must be filed within 7 days after the date on which the respondent is served with the appeal notice.

(3) A Form No. 85 may be filed together with an application, made in accordance with rule 13, for an interim order.

(4) If a respondent does not file a Form No. 85 within the 7 days or any extension of that period ordered by the court, the respondent is not entitled to take part or be heard in the appeal and is not a party to the appeal for the purposes of these rules.

[Rule 12 inserted: Gazette 21 Feb 2007 p. 569.]

13. Interim order, applying for

(1) At any time after an appeal is commenced and before it is concluded a party may apply for an interim order or an order amending or cancelling an interim order.

(2) To make such an application, the party must file a Form No. 86 (Application in an appeal) with —

(a) an affidavit by the applicant or the applicant's lawyer or both explaining why the interim order is wanted; and

(b) a document setting out the proposed order,

unless a judge orders otherwise.

[Rule 13 inserted: Gazette 21 Feb 2007 p. 570.]

14. Urgent appeal order, nature of

(1) An urgent appeal order in relation to an appeal is an order that the appeal is an urgent appeal that must be heard as quickly as practicable consistent with the proper administration of justice.

(2) An urgent appeal order must include an order setting a timetable for the various requirements of these rules and may include —

(a) an order dispensing with or modifying any such requirement;

(b) any order that will or may facilitate the appeal being heard as quickly as practicable consistent with the proper administration of justice.

[Rule 14 inserted: Gazette 21 Feb 2007 p. 570.]

15. Consenting to orders

The parties to an appeal may consent to an interim or other order, other than an urgent appeal order, being made by filing a Form No. 87 (Consent notice).

[Rule 15 inserted: Gazette 21 Feb 2007 p. 570.]

16. Appeal books not needed unless ordered

An appeal book containing the documents needed to decide the appeal is not required unless it has been ordered under rule 4.

[Rule 16 inserted: Gazette 21 Feb 2007 p. 570.]

Division 4 — Concluding an appeal

[Heading inserted: Gazette 21 Feb 2007 p. 570.]

17. Discontinuing an appeal

(1) The appellant may discontinue an appeal by filing and serving a Form No. 89 (Discontinuance notice).

(2) If it appears to the court that the appellant is a person under disability (as defined in Order 70 rule 1), the Form No. 89 does not have effect unless it is approved by a judge.

(3) An application for the approval of a judge must be filed with an affidavit and, unless a judge orders otherwise, an opinion by an independent lawyer.

(4) Unless a judge orders otherwise, an appellant who discontinues an appeal must pay the respondent's costs in respect of the appeal which must be taxed if they are not agreed.

(5) In an appeal where the respondent also appeals against the primary court's decision, subrules (1) to (4) and Form No. 89 apply with any necessary changes.

(6) The discontinuance of an appeal by the appellant does not affect any appeal by a respondent who also appeals against the primary court's decision.

[Rule 17 inserted: Gazette 21 Feb 2007 p. 570-1.]

18. Settling an appeal

(1) The parties to an appeal may file a Form No. 87 (Consent notice), modified as necessary, stating the final order that the parties consent to being made in the appeal.

(2) When a consent notice is filed, the registrar must refer it to a judge who may direct the registrar —

(a) to issue a final order in accordance with the notice; or

(b) to notify the parties that the judge will decide the final orders at a hearing.

(3) A settlement or compromise of an appeal to which a person who appears to the court to be under disability (as defined in Order 70 rule 1) is a party has no effect unless it is approved by a judge.

(4) An application for the approval of a judge must be filed with an affidavit and, unless a judge orders otherwise, an opinion by an independent lawyer.

[Rule 18 inserted: Gazette 21 Feb 2007 p. 571; amended: Gazette 28 Jun 2011 p. 2551.]

19. Return of exhibits

(1) This rule does not apply to or in respect of any record or thing that forms part of the Court's record.

(2) After an appeal is concluded, a registrar must, unless the Court has ordered otherwise —

(a) return any record or thing given to the Court by the primary court to the primary court; and

(b) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court to collect it from the court; and

(c) by a written notice, require any person who, under a subpoena, produced any record or thing to the Court that was not admitted in evidence, to collect it from the court.

(3) A registrar must not act under subrule (2) until —

(a) the time for commencing proceedings in the Court of Appeal in relation to the appeal has expired; or

(b) if proceedings in the Court of Appeal in relation to the appeal are commenced before that time expires, the proceedings are concluded.

(4) Despite subrule (3), a registrar —

(a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or

(b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —

(i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or

(ii) it is necessary for that person to have use of the record or thing.

(5) If under subrule (4)(b) a registrar releases a record or thing to a person, the registrar may require the person, as a condition of

being given it, to file a written undertaking as to the care, maintenance and custody of it and its re-delivery to the Court.

(6) If a record or thing remains in the possession of the Court after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a judge may order a registrar to destroy it or dispose of it in some other way.

[Rule 19 inserted: Gazette 21 Feb 2007 p. 571-2; amended: Gazette 27 Feb 2018 p. 574.]

[Orders 65A and 65B deleted: Gazette 29 Apr 2005 p. 1800.]

Order 65C — *Electoral Act 1907* section 62N rules

[Heading inserted: Gazette 22 Feb 2008 p. 640.]

1. Term used: Electoral Commissioner

In this Order, unless the contrary intention appears —

Electoral Commissioner means the Electoral Commissioner appointed under the *Electoral Act 1907*.

[Rule 1 inserted: Gazette 2 Feb 2001 p. 698.]

2. Application of this Order

This Order applies to reviews by the Court of decisions referred to in section 62N(1) of the *Electoral Act 1907*.

[Rule 2 inserted: Gazette 2 Feb 2001 p. 698.]

3. Application for review

(1) An application for review to which this Order applies must be instituted within one month or such further period as the Court allows after the decision comes to the notice of the applicant.

(2) A copy of the notice of originating motion must be served on the Electoral Commissioner.

(3) If the Electoral Commissioner wishes to be heard at the hearing of the review, the Commissioner must enter an appearance.

[Rule 3 inserted: Gazette 2 Feb 2001 p. 698.]

4. Title of proceedings

The notice of originating motion and all subsequent proceedings on reviews to which this Order applies, must be entitled "In the Supreme Court of Western Australia", "On review of a decision of the Electoral Commissioner, and in the matter of the *Electoral Act 1907*, and in the matter of the application or other proceeding in which such decision was given".

[Rule 4 inserted: Gazette 2 Feb 2001 p. 698.]

5. Hearing the review

(1) Subject to subrules (2) and (3) and the provisions of the *Electoral Act 1907*, the review must be heard by a judge sitting in Court.

(2) A judge may, at any time before the hearing of a review, direct that the review is to be heard by a judge sitting in chambers.

(3) The judge hearing a review in Court may direct that the further hearing of the review be adjourned into chambers.

(4) A review directed under subrules (2) and (3) to be heard or further heard in chambers may be adjourned from chambers into Court.

[Rule 5 inserted: Gazette 2 Feb 2001 p. 698-9.]

6. Date of hearing

(1) Unless the Court otherwise orders, a review to which this Order applies must not be heard before the expiration of 21 days from the date when the review was instituted.

(2) Any party may apply to the Court for an order fixing the date for hearing the review.

(3) Unless an order under subrule (2) has been made, the day for hearing the review must be fixed by the proper officer in accordance with the practice of the Court.

(4) The proper officer must send to the applicant and to the Electoral Commissioner, notice of the day fixed for the hearing of the review.

(5) If the day for hearing the review is fixed by the proper officer it must not be earlier than 7 days after notice has been sent to the applicant and to the Electoral Commissioner under subrule (4).

[Rule 6 inserted: Gazette 2 Feb 2001 p. 699.]

7. Review book

(1) The applicant must, not less than 6 clear days immediately preceding the day fixed for hearing the review —

(a) prepare to the satisfaction of the registrar a review book containing all material relevant to the hearing of the review; and

(b) file 2 copies of the review book so prepared, for the use of the judge upon the hearing; and

(c) serve upon the Electoral Commissioner one copy of the review book.

(2) Unless the Court otherwise orders, the costs of complying with this rule are to be costs in the cause.

[Rule 7 inserted: Gazette 2 Feb 2001 p. 699; amended: Gazette 27 Feb 2018 p. 574.]

8. Applicant limited to grounds in originating motion

(1) If the applicant intends to ask for any amendment at the hearing the applicant must give notice of the applicant's intention and of the proposed amendment.

(2) The Court may allow any amendment which it thinks necessary for the advancement of justice, but except by leave of the Court a ground must not be relied on at the hearing other than a ground set out in the notice of originating motion.

[Rule 8 inserted: Gazette 2 Feb 2001 p. 699-700.]

9. Right to be heard in opposition

(1) On the hearing of the application the Court must hear any person who wants to oppose it, and appears to the Court to be a proper person to be heard, notwithstanding that the person has not been served with the notice of originating motion.

(2) A person who is heard under this rule, may, in the discretion of the Court, be ordered to pay costs.

[Rule 9 inserted: Gazette 2 Feb 2001 p. 700.]

10. Additional affidavits, determination of issue etc.

(1) On the hearing of the application the Court may allow the applicant to use further affidavits upon such terms as to adjournment or costs as the Court thinks fit.

(2) If the applicant intends to ask to be allowed to use further affidavits, the applicant must give reasonable notice of the applicant's intention to the Electoral Commissioner.

(3) If any question or issue of fact arises upon the affidavits the Court may give such directions as it thinks fit for the determination of the question or issue by trial or inquiry.

[Rule 10 inserted: Gazette 2 Feb 2001 p. 700.]

11. Order as to result of review

(1) The result of the review must be embodied in a formal order, which must be filed.

(2) Except where the formal order is filed by or on behalf of the Electoral Commissioner, the registrar must send to the Electoral Commissioner, a memorandum of the result of the review.

[Rule 11 inserted: Gazette 2 Feb 2001 p. 700; amended: Gazette 27 Feb 2018 p. 575.]

12. Application of rules of court

In so far as the ordinary practice of the Court and the rules of court are not inconsistent with the provisions of this Order, they apply to proceedings under this Order with such modifications as the circumstances require.

[Rule 12 inserted: Gazette 2 Feb 2001 p. 700.]

Order 66 — Costs

Division 1 — General

[Heading inserted: Gazette 22 Feb 2008 p. 640.]

1. General rules as to costs

(1) Subject to the express provisions of any statute and of these rules the costs of and incidental to all proceedings including the administration of estates and trusts shall be in the discretion of the Court but, without limiting the general discretion conferred on the Court by the Act, and subject to this Order, the Court will generally order that the successful party to any action or matter recover his costs.

(2) If the Court is of opinion that the conduct of a party either before or after the commencement of the litigation or that a claim by a party for an unreasonably excessive amount has resulted in costs being unnecessarily or unreasonably incurred it may deprive that party of costs wholly or in part, and may further order him to pay the costs of an unsuccessful party either wholly or in part.

(3) Where a party though generally successful in an action has, by the introduction of some issue or issues on which he has failed, increased the costs the Court may order such party to pay the costs of such issue or issues.

(4) Where a plaintiff obtains a judgment or order against a defendant who has been joined in order that all parties interested in the *lis* shall be bound by the judgment or order, no order for costs shall be made against such defendant if he is not in default, or if he does not contest the plaintiff's claim, and has not made any claim or asserted any right in the *lis*, but in such case the Court may grant that defendant such sum for costs as will compensate him for expenses necessarily incurred by him and may in doing so exercise the powers hereinafter conferred

on it to order costs out of any property or fund with or without a right of recourse against any other party to the action or matter.

2. Costs where several causes of action, defendants etc.

In the absence of any special order —

(a) where the statement of claim contains more than one cause of action and the plaintiff succeeds on one or more causes of action and the defendant succeeds on another or others, costs shall be allowed to the plaintiff on the cause or causes of action on which he succeeds and to the defendant on that or those on which he succeeds, in the same manner as if separate actions had been brought;

(b) where there is judgment for one party on the claim with costs and judgment for the other party on the counterclaim with costs, the costs shall be assessed as if each party had succeeded in an independent action and charges which cover without discrimination, work referable to the claim and work referable to the counterclaim, shall be divided between the claim and the counterclaim in the proportion in which the work covered by such charge is properly attributable to the claim and to the counterclaim;

(c) where a party succeeds on both the claim and the counterclaim, the costs of the counterclaim shall be the amount only by which the costs of the proceedings have been increased by the counterclaim, and in the absence of directions by the Court as to the manner in which those costs are to be assessed such amounts shall be allowed as the taxing officer considers reasonable;

(d) where several defendants defend an action separately and it appears that the defendants or any of them might have joined in their defence, the Court may allow only one set of costs to those defendants as to whom it appears a joint defence might have been conducted and

separate costs to any other or others who in the opinion of the Court were properly separately represented;

(e) if there are several defendants and the plaintiff has a verdict against them, each of them shall be liable to the plaintiff for the entire costs although they defend separately: Provided that the Court may from time to time make an order or orders as between several defendants apportioning the liability as between themselves and the recovery of contribution;

(f) a plaintiff suing in a representative character shall personally be liable to pay costs to the defendant in case of a non-suit or of a judgment for the defendant.

3. Costs of amendment without leave or where facts or documents not admitted

(1) The costs of and occasioned by any amendment made without leave in the writ or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(2) If a party on whom a notice to admit facts is served under Order 30 rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(3) If a party —

(a) on whom a list of documents is served in pursuance of any provision of Order 26; or

(b) on whom a notice to admit documents is served under Order 30 rule 5,

gives notice of non-admission of any of the documents in accordance with Order 30 rule 4(2) or 5(2), as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

4. Action as to property, ordering costs out of property

(1) Where property is the subject of any action or matter, or where any question arising therein will affect any right or claim to property, the Court may make an order that the costs of any party may be recovered out of the property with or without recourse against any other party: Provided that no such order shall be made unless the Court is satisfied that the party seeking the order had a genuine interest to protect, or that it was reasonable in the circumstances that he should appear.

(2) Where the Court orders payment of costs out of any property it shall direct out of what portion or portions the costs shall be paid.

(3) The costs of inquiries to ascertain the person entitled to any share or interest in property shall be paid from such share or interest unless the Court shall otherwise direct.

5. Lawyer may be ordered to pay costs etc.

(1) Where in any proceedings costs are incurred by a party —

(a) as a result of any improper, unreasonable, or negligent act or omission; or

(b) which, in the light of any such act or omission occurring after they were incurred, the Court considers it is unreasonable to expect that party to pay,

the Court may order any legal practitioner whom it considers to be responsible (whether personally or through a servant or agent) —

(c) to pay those costs personally or to indemnify any party who has been ordered to pay those costs; or

(d) not to claim any relevant costs or fees; or

(e) to refund any relevant costs or fees which may have been paid already.

(2) No order under this rule shall be made against a legal practitioner unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made, except where any proceeding in court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made —

(a) because of the failure of the legal practitioner to attend in person or by a proper representative; or

(b) because of the failure of the legal practitioner to deliver any document for the use of the Court which ought to have been delivered, or to be prepared with any proper evidence or account, or otherwise to proceed.

(3) The Court may before making an order under this rule refer the matter to the taxing officer for inquiry and report.

(4) The Court may direct that notice of any proceedings or order against a legal practitioner under this rule shall be given to his client in such manner as may be specified in the direction.

[Rule 5 amended: Gazette 23 Jan 2001 p. 562-3; SL 2022/74 r. 15.]

6. Solicitor guardian *ad litem*, costs of

(1) Where the Court appoints a solicitor to be guardian *ad litem* of a person under disability, in any cause or matter, the Court may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties, or by some one or more of the parties, to the cause or matter, or out of any fund in court in which the person under disability is interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

(2) When a solicitor acts as guardian *ad litem* without an order of the Court appointing him as such guardian, the costs incurred in the performance of the duties of such office shall be in the discretion of the Court.

7. Set-off may be allowed despite solicitor's lien

A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular action in which the set-off is sought.

8. State solicitors, costs of

In all actions or matters in which a law officer or other solicitor employed by the State or any instrumentality of the State shall act in his official capacity the party for whom he acts shall be entitled to recover costs in the same manner and to the same extent as if the law officer or other solicitor were a private legal practitioner engaged by such party.

[Rule 8 amended: Gazette 19 Dec 1975 p. 4571; 19 Apr 2005 p. 1299; SL 2022/74 r. 15.]

8A. Costs in case of legal practitioner acting pro bono

(1) In an action or matter in which a legal practitioner provides free legal services to a party, the party shall be entitled to recover costs in the same manner and to the same extent as if the services were provided for reward.

(2) If an order is made for the payment of the party's costs, the legal practitioner may recover the amount ordered to be paid in respect of —

(a) fees for the legal practitioner's services; and

(b) disbursements incurred by the legal practitioner on behalf of the party.

[Rule 8A inserted: Gazette 22 Feb 2008 p. 641; amended: SL 2022/74 r. 15.]

9. Restriction of discretion to order costs in some cases

(1) In a probate action to which Order 73 rule 15 applies a party who only cross-examines the witnesses produced to support the will shall not be liable to pay the costs of the party propounding

the will unless the Court considers that there was no reasonable ground for opposing the will.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably, or in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

10. Stage at which costs may be dealt with

(1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings, and any order of the Court for the payment of costs may require the costs to be paid forthwith notwithstanding that the proceedings are not concluded.

(2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and where proceedings have been transferred or removed to the Court from any other court or tribunal the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court or tribunal ordering the transfer or removal) be dealt with by the Court.

(3) Where on an appeal or in proceedings transferred or removed to the Court, the Court makes an order as to the costs of proceedings before another court or tribunal, the Court may —

(a) specify the amount of the costs to be allowed; or

(b) order that the costs be taxed by the taxing officer; or

(c) order that the costs be ascertained by taxation or otherwise in that other court or tribunal.

11. Scale of costs

(1) For the purposes of this Order —

any relevant scale means any legal costs determination made under the *Legal Profession Uniform Law Application Act 2022* section 133, that relates to the costs that may be charged by law practices in respect of business before the Court carried out by legal practitioners.

(2) Except when otherwise ordered, solicitors are, subject to these rules, entitled to charge and be allowed the fees set forth in any relevant scale in respect of the matters referred to in that scale and higher fees shall not be allowed in any case, except such as are by this Order otherwise provided for.

(3) Subject to the provisions of the *Legal Profession Uniform Law (WA)* permitting law practices to make costs agreements with their clients, and to the provisions of these rules, the fees allowed under any relevant scale shall apply both as between party and party, and solicitor and client; but where additional costs (including expenses and counsel fees) have been incurred which in the opinion of the taxing officer are not properly recoverable against the party liable under the judgment or order to pay costs, but have nevertheless been properly incurred, or where costs have been incurred at the special request of the client, or in contesting and reducing a claim, those costs shall be recoverable from the client; and the taxing officer is hereby authorised to fix such sum as he thinks reasonable to cover the additional costs.

(4) Subject to the provisions of this Order, and to any order made by the Court and the terms of any relevant scale, the fees prescribed by any relevant scale cover all work done, whether by the solicitor or by counsel.

(5) An allowance to a witness for his attendance at a trial or hearing shall be calculated in accordance with the scale of witness fees in force at the time of the trial or hearing.

[Rule 11 inserted: Gazette 7 Feb 1992 p. 686-7; amended: Gazette 19 Apr 2005 p. 1299; 3 Jul 2009 p. 2699; SL 2022/74 r. 11(1) and (2) and 15.]

*[**12.** Deleted: Gazette 21 Feb 2007 p. 575.]*

13. Costs where scale does not apply

In any matter or case to which any relevant scale does not apply, the Court may —

(a) award a lump sum by way of costs;

(b) direct the taxing officer to tax or allow costs analogous to those allowable under the said scale;

(c) direct the taxing officer to tax and allow reasonable costs.

[Rule 13 amended: Gazette 7 Feb 1992 p. 687.]

14. Lump sum award for costs, interim award as to

(1) Where it appears to the Court making a lump sum award for costs that some item or section of costs incurred by a party may be justified, but that it cannot be substantiated in detail or in quantum without considerable delay, the Court may make an interim award, and reserve the item or section in question for later consideration.

(2) Such interim award may be enforced as a judgment of the Court, and any award made on further consideration shall be enforceable in like manner.

(3) This rule shall apply to any cause or matter in which the question of costs has not been disposed of, whether commenced before or after these rules come into force.

*[**15.** Deleted: Gazette 19 Dec 1975 p. 4572.]*

*[**16.** Deleted: Gazette 7 Feb 1992 p. 687.]*

17. Cases that Magistrates Court could have decided, costs in

(1) If an action is brought in the Supreme Court which could have been brought in the Magistrates Court without the special consent of the defendant, the plaintiff shall recover no greater sum by way of costs than he could have recovered had the action been brought in the Magistrates Court, unless the Court certifies that by reason of some important principle of law being involved, or of the complexity of the issues or of the facts, the action was properly brought in the Supreme Court.

(2) Where this rule applies a solicitor acting for a plaintiff shall not be entitled to charge his client any sum by way of costs in excess of that properly payable on a party and party basis in the Magistrates Court, unless the client has agreed in writing, before the proceedings are commenced, to pay on a higher scale, or the Court has certified that the action was properly brought in the Supreme Court.

[Rule 17 amended: Gazette 29 Apr 2005 p. 1800.]

18. Matters not provided for in scale

(1) In any matter not specially provided for in any relevant scale, the Court or the taxing officer may allow costs by way of analogy according to the item in the scale which is most nearly applicable thereto; or if in the opinion of the Court or the taxing officer, there is no such item, the costs shall be fixed at such sum as in the opinion of the Court or the taxing officer is adequate in the circumstances.

(2) Without limiting the generality of subrule (1), the taxing officer may allow such fees as he considers reasonable —

(a) in connection with the compromise of a claim by or against a person under a disability; or

(b) for a conference or consultation where and to the extent that the conference or consultation was necessary.

[Rule 18 inserted: Gazette 19 Dec 1975 p. 4572-3; amended: Gazette 14 Dec 1979 p. 3871; 7 Feb 1992 p. 687; 28 Jun 2011 p. 2552.]

19. Disbursements etc. allowable on taxation

Any of the following items, disbursements, expenses, payments, or charges are allowable on taxation —

(a) items of costs allowable under any relevant scale and such counsel fees as may be allowed;

(b) disbursements for fees of court;

(c) disbursements for fees of officers of the Court;

(d) witness expenses paid or to be paid under any relevant scale of allowances fixed in that regard;

(e) agency charges, if specially allowed by the Court or by the taxing officer;

(f) the reasonable expenses as fixed by the taxing officer of the typing, printing, and binding of appeal books;

(g) other necessary disbursements or payments made in the conduct of the litigation;

(h) any other necessary expense incurred in the conduct of the litigation, whether or not it has been paid before the taxation of that expense takes place.

[Rule 19 inserted: Gazette 30 Jun 2000 p. 3418.]

20. Basis for calculating costs

(1) Where the claim is for a liquidated sum costs are to be calculated on the amount recovered by the plaintiff if he succeeds, and on the amount claimed if the defendant succeeds.

(2) Where relief other than a liquidated sum is claimed, either alone or in addition to a liquidated sum, the Court in giving judgment

shall fix the value of the subject matter for the purpose of determining the basis on which the party and party costs and the solicitor and client costs of each party shall be calculated. The value so fixed need not necessarily be the same for each party.

(3) If judgment is entered before trial without application to a judge or a master, the taxing officer shall determine the value of the subject matter for the purpose of this rule, or may fix a lump sum for costs, and in the case of difficulty may refer the matter to a judge.

(4) The costs of the solicitor for the unsuccessful party as against his client shall be on the same basis as the costs of the successful party unless the judge at the trial or in chambers orders otherwise: Provided that the client or the solicitor may, at any time within 6 calendar months from the date of judgment, apply to a judge for an order that such costs be fixed on some other basis.

[Rule 20 amended: Gazette 30 Nov 1984 p. 3952.]

21. No substantial trial, costs in case of

Where for any reason there is no substantial trial, the judge or the taxing officer may make such allowance in lieu of the fees prescribed by any relevant scale as he considers to be merited in the circumstances.

[Rule 21 amended: Gazette 19 Dec 1975 p. 4573; 7 Feb 1992 p. 687.]

*[**22.** Deleted: Gazette 19 Dec 1975 p. 4573.]*

23. Certain fees in scales may be increased if inadequate

If it is shown to the satisfaction of the taxing officer that by reason of special circumstances, a fee in any relevant scale which includes the drawing or settling of a pleading or other document is inadequate, the taxing officer may allow such additional sum as he thinks proper, whether the pleading or

document has been drawn or settled by counsel or by the solicitor.

[Rule 23 amended: Gazette 19 Dec 1975 p. 4573; 7 Feb 1992 p. 687.]

24. Judgment for person under disability, solicitor's costs in case of

(1) In this rule the term ***person under disability*** has the same meaning as in Order 70.

(2) This rule applies to —

(a) any proceedings (including an action under the *Fatal Accidents Act 1959*) in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability or in which money paid into court is accepted by or on behalf of such a person; and

(b) any proceedings before the Court of Appeal on an application or appeal made in connection with any proceedings to which this rule applies by virtue of paragraph (a).

(3) Except as provided by subrule (4) the costs payable to his solicitor by or on behalf of a plaintiff who is a person under disability or from any money recovered by or on behalf of a person under disability in any proceedings to which this rule applies being the costs of or incidental to those proceedings or consequent thereon, must be taxed; and no costs shall be charged or retained by the solicitor of any plaintiff in respect of those proceedings except the amount of such taxed costs.

(4) This rule does not apply where the plaintiff's solicitor does not claim additional costs against his client over and above the party and party costs, as ascertained by taxation or the agreement of the defendant, payable to the client in the proceedings.

(5) Subrule (3) applies in relation to any proceedings to which this rule applies by virtue of subrule (2)(b) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings in the court below.

(6) Nothing in subrules (1) to (5) shall prejudice a solicitor's lien for costs.

(7) Subrules (1) to (6) apply in relation to a counterclaim by or on behalf or for the benefit of a person under disability, as if for references to a plaintiff there were substituted references to a defendant.

[Rule 24 amended: Gazette 29 Apr 2005 p. 1795; 28 Jun 2011 p. 2552 and 2555.]

25. Own costs orders

(1) In this rule —

claim means a claim for relief in connection with —

(a) an alleged breach of any provision in the Australian Consumer Law (as defined in the *Fair Trading Act 2010* section 17) Part 2.2, 2.3 or 5.5; or

(b) an alleged breach of the *Corporations Act 2001* (Commonwealth) section 991A or 1325C; or

(c) an allegation of unconscionable conduct; or

(d) an allegation of economic duress or abuse of power;

claimant means a person making a claim;

own costs order, in relation to a case, means an order that each party to the case is to bear its own costs of the proceedings.

(2) Subject to subrules (3) and (4), the Court may, on an application by a claimant, make an own costs order at any time during proceedings on a case that involves a claim.

(3) Before making the own costs order the Court must have regard to the following —

(a) whether the proceedings raise an issue of general importance;

(b) whether a defendant to the claim has substantially greater financial resources than a claimant;

(c) whether the claim has reasonable merit;

(d) whether the legal practitioners of each claimant have agreed to act on a fee arrangement that, viewed objectively at the time the arrangement is made, is likely to result in the claimant being charged no more than the fees that could be recovered under the applicable Court scale;

(e) any other matter the Court considers appropriate.

(4) The Court must not make an own costs order if a claimant has agreed to pay any part of the proceeds obtained by way of judgment or settlement of the claim to any third party who is in the business of providing litigation funding or support.

(5) An own costs order does not affect a party's liability for costs ordered against the party —

(a) by way of sanction for improper conduct or abuse of process, including persistently advancing by way of claim or defence contentions that are not reasonably arguable; or

(b) in other exceptional circumstances that the Court considers warrant the making of a special order for costs.

(6) An own costs order applies to costs incurred by the parties —

(a) from a time during the proceedings specified in the order; or

(b) if no time is specified in the order, from the day on which the order is made.

(7) For the purposes of subrule (6)(a), the Court may specify a time during the proceedings that is before the own costs order was made or applied for.

(8) The Court may revoke an own costs order at any time during proceedings if the Court considers that there has been a material change in the circumstances warranting the revocation.

(9) An own costs order revoked under subrule (8) continues to apply to costs incurred by the parties before the day on which the order was revoked as if the order had not been revoked.

(10) This rule does not affect the Court's general discretion with respect to costs.

[Rule 25 inserted: Gazette 26 Sep 2014 p. 3560-1; amended: SL 2022/74 r. 15.]

*[**26-31.** Deleted: Gazette 19 Dec 1975 p. 4573.]*

Division 2 — Taxation of costs

[Heading inserted: Gazette 22 Feb 2008 p. 640.]

32. Bills of costs to be taxed

(1) Unless the Court in a particular case otherwise directs, bills of costs and fees which are payable to legal practitioners admitted and entitled to practise in the Court in respect of business transacted by them in the Court or its offices, and which have been directed by judgment or order to be taxed, shall be taxed, allowed and certified by the taxing officer who shall appoint a time for taxation on the application of the party claiming taxation.

(2) Where an action, summons or other proceeding is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under these rules to tax his costs, then subject to rule 49, those costs may be taxed without any order in that behalf being made.

[Rule 32 amended: SL 2022/74 r. 15.]

33. Indorsements on bill of costs

Every bill of costs which is left for taxation shall have indorsed therein a notice of appointment, and the name and address of the solicitor by whom it is so left, including any solicitor who is entitled or intended to participate in the costs to be taxed.

[Rule 33 amended: Gazette 27 Feb 2018 p. 575.]

34. When notice of taxation need not be given

Notice of taxing costs need not be given to any party who has not entered an appearance or taken any part in the proceedings to which the costs relate.

35. Notice of taxation

(1) Where notice is required 2 clear days' notice of taxing costs together with a copy of the bill of costs, and of any affidavit of increase which may be necessary, shall be given to the other party by the party whose costs are to be taxed.

(2) In cases of urgency the taxing officer may direct that one clear day's notice only shall be given.

36. Vouchers as to disbursements to be filed

A party leaving a bill of costs for taxation must file with the bill vouchers for the payment of all disbursements (other than court fees) included in the bill; and where the vouchers are numerous they must be marked with the corresponding number in the bill.

[Rule 36 inserted: Gazette 19 Dec 1975 p. 4573; amended: Gazette 27 Feb 2018 p. 575.]

37. Solicitor delaying taxation

Where any solicitor fails to file his bill with the necessary papers and vouchers within the time or extended time fixed by

the taxing officer, or in any way delays or impedes the taxation he shall, unless the taxing officer otherwise directs, forfeit the fees to which he would be entitled for preparing his bill of costs and attending on taxation.

[Rule 37 amended: Gazette 27 Feb 2018 p. 575.]

38. Appointment to tax costs to be peremptory

The appointment made by the taxing officer shall be peremptory, and he shall proceed thereon *ex parte* on proof that due notice has been given to the opposite party, unless sufficient cause appears for postponement.

39. Taxing officer may direct bills of costs to be brought in

When an order directing the taxation of any costs in a proceeding has been made, the taxing officer may of his own motion give notice to a party to file his bills of costs for taxation and may limit a time for that purpose.

[Rule 39 amended: Gazette 27 Feb 2018 p. 575.]

40. Default by party in taxing costs

When a party entitled to costs refuses or neglects to file his costs for taxation within any period limited under rule 39, the taxing officer may —

(a) certify the costs of the other parties and the refusal or neglect; or

(b) allow a nominal or other sum to the party refusing or neglecting, for his costs.

[Rule 40 amended: Gazette 27 Feb 2018 p. 575.]

41. If costs payable out of property, notice to clients may be directed

Where in any action or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, previously to completing the

taxation, require the solicitor to deliver or send to his clients, or any of them free of charge, a copy of such bill or any part thereof, accompanied by any statement such officer may direct and by a letter informing such client that the bill of costs has been referred to the taxing officer for taxation and that the taxation will be proceeded with at the time the taxing officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

42. Bills of costs, content of

(1) A bill of costs for taxation shall be prepared so as to show clearly —

(a) items consecutively numbered, together with a reference to the item in the scale to which the item in the bill relates; and

(b) dates of items (specifying years, months and days); and

(c) where necessary, particulars of the services charged for; and

(d) disbursements; and

(e) professional charges.

(2) Professional charges and disbursements shall be entered in separate columns and each column shall be added before the bill is filed.

[Rule 42 inserted: Gazette 30 Aug 1974 p. 3242; amended: Gazette 19 Dec 1975 p. 4573.]

43. Taxing officer's decisions on fact are final

The decision of the taxing officer on all questions of fact shall be final.

44. Taxing officer's powers

The taxing officer may, for the purposes of taxation of costs —

(a) summon and examine witnesses either orally or upon affidavit;

(b) administer oaths;

(c) direct or require the production of books, papers, and documents;

(d) issue subpoenas;

(e) make separate or interim certificates or allocaturs;

(f) require a party to be represented by a separate solicitor;

(g) exercise all the powers of the Court in relation to the admission of evidence;

(h) where a solicitor is not on the record for a party which is a body corporate permit a person who is not a solicitor to represent the body corporate on the taxation.

[Rule 44 amended: Gazette 26 Mar 1993 p. 1845-6; 26 Aug 1994 p. 4415.]

45. Taxing officer may refer taxation question to Court

The taxing officer may, of his own motion, refer any question arising in the course of a taxation for the direction of the Court.

46. Where proceedings adjourned into court

Where a judge directs that any matter shall be adjourned into court the same fees shall, if the judge so orders, be payable and the same costs shall be allowed in respect of proceedings subsequent to the adjournment as would have been payable if the matter had been commenced in court.

47. Interrogatories and discovery, costs of

(1) The costs of interrogatories shall be reserved for consideration of the judge at the trial. Where there is no trial such costs shall be in the discretion of the taxing officer.

(2) In considering whether any order or allowance should be made for the costs of interrogatories, the judge or the taxing officer shall consider whether the party requesting answers to interrogatories has by his conduct in connection with the request, unnecessarily increased the costs and whether the results achieved have justified wholly or in part the additional costs involved.

(3) The party against whom an order for discovery or to answer or further answer interrogatories is made must pay the costs of the application, unless the Court otherwise orders.

(4) Subject to these rules, and to any order of the Court, the costs of obtaining discovery including inspection of documents is in the discretion of the taxing officer, but no allowance shall be made if it is shown to his satisfaction that there were not good and sufficient grounds for obtaining discovery and making the inspection.

48. Costs of motion etc. follow event

(1) Unless the Court otherwise orders, the costs of a motion or application in an action shall be deemed to be part of the costs of the action of the party in whose favour the motion or application is determined unless the motion or application is unopposed.

(2) When the motion or application is unopposed, the costs of both parties shall be deemed to be part of their costs of the action, unless the Court otherwise orders.

49. Motion etc. stood over to trial and no order made as to costs, costs in case of

When a motion, application or other proceeding is ordered to stand over to the trial and no order is made at the trial as to the costs of the motion, application or proceeding, the costs of both parties of the motion, application or proceeding shall be deemed to be part of their costs of the action.

50. Costs reserved

When the costs of a motion, application, or other proceeding are reserved by the Court or a judge, costs of the motion, application, or proceedings shall not be allowed to a party without an order of the Court or a judge.

51. When Court may fix costs

(1) In a particular action or matter the Court may, instead of making an order for taxation of costs —

(a) make an order fixing the costs of a party to the action or matter in accordance with this Order; or

(b) make an order under the *Legal Profession Uniform Law Application Act 2022* section 141(3).

(2) The Court may make an order under subrule (1) on its own motion or on an application by a party.

(3) A party seeking an order under subrule (1)(b) must apply for the order within —

(a) 30 days after the date of the relevant judgment; or

(b) another time fixed by the Court.

[Rule 51 inserted: Gazette 29 Jun 2018 p. 2438; amended: SL 2022/74 r. 11(3).]

52. Taxing officer may refer question to judge if costs to be apportioned etc.

Where taxation of costs is ordered and by the terms of the order or by the effect of the order, the costs are to be apportioned as between the parties, or a party is entitled to receive the costs applicable to any part of the action or matter, or where the costs of a counterclaim are concerned, then in case of any doubt or difficulty arising on taxation there shall be deemed to be reserved in every such order an authority to the taxing officer or any party to refer the question to a judge.

Division 3 — Review of taxation

[Heading inserted: Gazette 22 Feb 2008 p. 641.]

53. Party dissatisfied with taxation may object and apply for review

(1) A party who contends that the taxing officer has made an error in principle in allowing or disallowing any item or part of an item in a bill of costs taxed by him may, at any time before a certificate of taxation dealing finally with that item is signed, or at such earlier time as may, in any case, be fixed by the taxing officer —

(a) deliver to the other party interested in the allowance or disallowance and carry in before the taxing officer, an objection in writing to the allowance or disallowance specifying in the objection by a list, in a short and concise form, the items or parts of items objected to, and the grounds and reasons for the objections; and

(b) thereupon apply to the taxing officer to review the taxation in respect of those items or parts.

(2) Pending the consideration and determination of the objection, the taxing officer may if he thinks fit issue a certificate of taxation for or on account of the remainder or of part of the bill of costs. Any further certificate which may be necessary shall be issued by the taxing officer after his decision upon the objections.

54. Review of taxation by taxing officer

(1) Upon an application under rule 53 to review the taxation, the taxing officer shall reconsider and review his taxation in relation to the objections, and he may, if he thinks fit, receive further evidence in respect of the objections.

(2) If so required by a party, the taxing officer shall state in his certificate of taxation or by reference to the objection, the

ground and reason of his decision on the objection, and any special facts or circumstances relating to his decision.

(3) The taxing officer may tax the costs of the objections and add them to or deduct them from, any sum payable by or to a party to the taxation.

(4) Except as provided by this rule, the taxing officer shall not, after a certificate of taxation is signed, review his taxation or amend his certificate, except to correct a clerical or manifest error before payment or process issued for recovery of the costs.

(5) If a party fails to appear on the taxation the taxing officer may, upon an application in that behalf made in writing within 7 days, set aside or vary his certificate of taxation on such terms as he thinks just.

[Rule 54 amended: Gazette 7 Feb 1992 p. 687; 28 Jun 2011 p. 2555.]

55. Review of taxation by judge

(1) If a party is dissatisfied with the certificate of the taxing officer as to any item or part of an item objected to under rule 53 of this Order, he may, within 14 days from the date of the certificate, or such other time as the Court, or the taxing officer at the time he signs his certificate, allows, apply to a judge in chambers for an order to review the taxation as to that item or part of an item.

(2) The judge, if of opinion that the taxing officer has made an error in principle, may thereupon make such order to rectify the error as the judge thinks just.

(3) The certificate of the taxing officer is final and conclusive as to all matters which have not been objected to in accordance with these rules.

56. No further evidence on review except with leave

An application under rule 55 to a judge to review the taxation shall be heard and determined by the judge upon the evidence

which has been brought in before the taxing officer, and further evidence shall not be received upon the hearing of the application unless the judge otherwise directs.

[Rule 56 amended: Gazette 28 Jun 2011 p. 2555.]

Division 4 — Miscellaneous

[Heading inserted: Gazette 22 Feb 2008 p. 641.]

57. Taxing officer's certificate enforceable as judgment

The costs allowed by the taxing officer on any interim or final certificate of taxation shall be deemed to be a judgment of the Court, and shall be recoverable accordingly.

58. Stay on review

A party who has required the taxing officer to state the ground and reason of his decision on an objection for the purpose of applying to a judge to review the taxation, may request the taxing officer to grant a stay of proceedings either wholly or limited to the item or part of an item which is the subject of the objection, and in the event of the taxing officer refusing such stay may apply to a judge.

59. Party liable to be paid and to pay costs, taxing officer's powers in case of

Where a party who is entitled to be paid costs is also liable to pay costs, the taxing officer may, subject to any direction of the Court —

(a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or

(b) delay the issue of a certificate of taxation for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

60. Taking of accounts, taxing officer's duties and powers on

(1) Where on the taking of accounts, the accounts consist in part of a bill of costs, the taxing officer shall assist in settling the costs, not being the ordinary costs of passing the accounts of a receiver.

(2) On a bill of costs being referred under this rule, the taxing officer shall proceed to tax the costs, and shall have the same powers, and the same fees shall be payable in respect of the taxation, as if those costs had been referred to the taxing officer for taxation by an order.

(3) The taxing officer shall report and certify the costs to the master or to the registrar or other officer taking the accounts.

[Rule 60 amended: Gazette 14 Dec 1979 p. 3871.]

61. Interim certificate in matters of account

If, during the taxation of any bill of costs or the taking of any account between solicitor and client, it shall appear to the taxing officer that there must in any event be moneys due from the solicitor to the client, the taxing officer may from time to time make an interim certificate as to the amount so payable by the solicitor. Upon the filing of such certificate the Court may order the moneys so certified to be forthwith paid to the client or brought into Court.

Order 67 — Central Office, officers

1. Superintendence of Central Office

The Chief Justice or the Principal Registrar must superintend the business of the Central Office and give any directions that may be required on questions of practice and procedure.

[Rule 1 inserted: Gazette 14 Dec 1979 p. 3871; amended: Gazette 30 Nov 1984 p. 3952; SL 2020/242 r. 7(1).]

2. Ministerial acts of registrar

Where under these rules a registrar (including the Principal Registrar) is required or empowered to do an act of a ministerial nature, it is sufficient if that act is done by another officer of the Court or by a clerk in the Central Office.

[Rule 2 inserted: Gazette 14 Dec 1979 p. 3871.]

3. Taking of oaths and affidavits

The masters and the registrars shall, by virtue of their offices, have authority to take oaths and affidavits in the Supreme Court.

[Rule 3 inserted: Gazette 14 Dec 1979 p. 3871; amended: Gazette 30 Nov 1984 p. 3952.]

4. Seals

The official seals of the Court shall be such as the Chief Justice from time to time directs.

[Rule 4 amended: Gazette 27 Feb 2018 p. 576.]

5. Abuse of process etc., procedure in case of

(1) If any writ, process, motion, application or commission, which is presented for filing, issue or sealing appears to the registrar to be an abuse of the process of the Court or a frivolous or vexatious proceeding, the registrar shall refuse to file or issue such writ, process, motion, application or commission without

the leave of a judge or a master first had and obtained by the party seeking to file or issue it.

(2) In the case of a motion or an application ordinarily returnable before a master in chambers, an application for leave to file or issue such motion or application shall be made to a master in chambers.

(3) In all other cases, an application or commission shall be made to a judge in chambers.

(4) Applications for leave under subrules (2) and (3) shall be made *ex parte* and shall be supported by affidavit.

[Rule 5 inserted: Gazette 24 Jan 1995 p. 271; amended: Gazette 28 Jun 2011 p. 2552-3.]

6. Sealed documents, evidentiary status of

All copies, certificates, and other documents appearing to be sealed with a seal of the Court shall be presumed to be true copies or certificates or other documents issued by the Court, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Court, shall be required for the authentication of any such copy, certificate, or other document.

[Rule 6 amended: Gazette 27 Feb 2018 p. 576.]

7. Petition, award etc. to be filed before judgment etc. passed

No order made on a petition, and no order to make a submission to arbitration, or an award, an order of the Court, and no judgment or order wherein any written admissions of evidence are entered as read, shall be passed, until the original petition, submission to arbitration, or award, or written admissions of evidence, shall have been filed, and a note thereof made on the judgment or order by the proper officer.

8. Indexes to filed documents

Proper indexes or calendars to the files or bundles of all documents that are filed must be kept, in the manner directed by the Chief Justice from time to time, so that they may be conveniently referred to when required.

[Rule 8 inserted: Gazette 27 Feb 2018 p. 576.]

9. Date of filing to be marked etc.

(1) All documents filed in any proceedings must be sealed with a seal showing the date on which the document was filed and, if the document was filed electronically, a record of the fact that it was filed electronically.

(1A) A document filed electronically may be sealed by means of the ECMS.

(2) There shall be entered in records kept in the manner directed by the Chief Justice from time to time for the purpose particulars of the date of delivery or receipt of every document for filing, the date of the document and the title of the cause or matter of which the document forms part of the record.

[Rule 9 amended: Gazette 26 Mar 1993 p. 1846; 22 Feb 2008 p. 650; 27 Feb 2018 p. 577; 31 Dec 2019 p. 4677-8.]

10. Custody of documents and things

(1) The Principal Registrar has custody of all —

(a) filed documents; and

(b) things and other documents kept, left or deposited in the Central Office, whether or not due to a Court order.

(2) The Principal Registrar must ensure the things referred to in subrule (1) are kept in safe custody.

[Rule 10 inserted: Gazette 27 Feb 2018 p. 577.]

*[**11.** Deleted: Gazette 27 Feb 2018 p. 577.]*

12. Deposit of documents

Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in chambers, or otherwise, the same shall be left or deposited in the Central Office, and shall be subject to such directions as may be given for the production thereof.

13. Restriction on removal of documents

(1) No document filed in or in the custody of any office of the Supreme Court shall be taken out of that office without leave of the Court or a registrar unless the document is to be sent to a circuit court.

(2) No subpoena for the production of any such document shall be issued.

[Rule 13 amended: Gazette 14 Dec 1979 p. 3871.]

14. Deposit for officer's expenses

Any officer being required to attend with any record or document at any court or place out of the Supreme Court, shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit.

15. Admissions, awards etc. to be filed

All petitions and written admissions of evidence whereon any order is founded, and all awards on submissions to arbitration made orders of the Court, shall be transmitted to and left at the Central Office, to be there filed or preserved, and all copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within 48 hours after the same shall have been bespoken.

[Rule 15 amended: Gazette 27 Feb 2018 p. 577.]

16. New forms

The Chief Justice or the Principal Registrar may from time to time prescribe the use in or for the purpose of the Central Office of such additional forms to those contained in Schedule 2, or of such modified forms, as may be deemed expedient.

[Rule 16 amended: Gazette 30 Nov 1984 p. 3952; 28 Jun 2011 p. 2555; SL 2020/242 r. 7(2).]

17. Accounts etc. to be taken by registrar, rules applying to

Where an account or inquiry is directed to be taken or made by, or a matter is referred to, a registrar or other officer of the Court, the provisions of Orders 35, 45, 51, 60 and 61 shall apply, in so far as they are relevant and with the necessary modifications, to and in relation to any such account, inquiry or matter.

[Rule 17 inserted: Gazette 14 Dec 1979 p. 3872; amended: Gazette 1 Aug 1980 p. 2559.]

18. Reference in judgment etc. to registrar, effect of

A reference in any judgment, decree or order to the registrar shall, unless otherwise directed by the Court, include a reference to the Principal Registrar, a registrar or a deputy registrar.

[Rule 18 inserted: Gazette 14 Dec 1979 p. 3872.]

*[**18A, 18B.** Deleted: Gazette 27 Feb 2018 p. 578]*

19. Principal Registrar may declare ECMS unavailable

(1) The Principal Registrar may, in any manner the Principal Registrar thinks fit, declare that the ECMS is unavailable for use for a period set by the Principal Registrar.

(2) The Principal Registrar, in writing, may delegate the Principal Registrar's function under this rule to 1 or more other officers of the Court.

(3) For the purposes of these rules, a declaration made by a delegate of the Principal Registrar under this rule is taken to be a declaration made by the Principal Registrar.

[Rule 19 inserted: Gazette 27 Feb 2018 p. 578; amended: Gazette 31 Dec 2019 p. 4677-8.]

*[**20, 21.** Deleted: Gazette 27 Feb 2018 p. 578.]*

Order 67A — Filing documents

[Heading inserted: Gazette 27 Feb 2018 p. 578.]

Division 1 — Preliminary matters

[Heading inserted: Gazette 27 Feb 2018 p. 578.]

1. Terms used

In this Order —

complying document means a document the form and content of which comply with these rules and any Court order or direction;

deliver means deliver by hand;

Practice Directions means practice directions issued by the Court from time to time.

[Rule 1 inserted: Gazette 27 Feb 2018 p. 578.]

Division 2 — Filing documents

[Heading inserted: Gazette 27 Feb 2018 p. 579.]

2. General rules about filing documents

(1) A person who is required by these rules or the Court to file a document, or who wants to do so, must, in accordance with this Order, present a complying document to the Court for filing.

(2) The complying document must be presented together with any fee required to be paid when filing it or with the information the Court needs to enable the Court to be paid the fee.

(3) A person must not present more than 1 copy of a document to the Court for filing unless these rules or the Court requires more than 1 copy to be filed.

(4) If a party is required by these rules or the Court to file a document, the party cannot, without the Court's leave, refer to

or rely on the document in any hearing or in any other filed document unless it has been filed.

(5) If under subrule (4) a party is given leave, the party must file the document as soon as practicable after the leave is given.

(6) The Principal Registrar may refuse to file a document that is presented for filing if it is not a complying document or has been presented in contravention of this Order or a direction given under rule 3(4).

[Rule 2 inserted: Gazette 27 Feb 2018 p. 579.]

3. Documents must be filed using ECMS

(1) To present a complying document to the Court for filing, a person must present it electronically using the ECMS and in accordance with rule 4 unless —

(a) the ECMS has been declared unavailable for use under Order 67 rule 19, is otherwise unavailable for use or does not permit the document to be presented; or

(b) these rules state that the document cannot be filed electronically; or

(c) the document is filed for the purposes of proceedings or matters referred to in Order 1 rule 3(2) or (3); or

(d) the document is filed for the purposes of Order 75A or 81H; or

(e) the document is filed for the purposes of a criminal appeal, as defined in the *Supreme Court (Court of Appeal) Rules 2005* rule 3(1); or

(f) the document is filed for the purposes of an application under the *Terrorism (Extraordinary Powers) Act 2005* or the *Terrorism (Preventative Detention) Act 2006*; or

(g) the document is filed for the purposes of an urgent application made outside office hours; or

(h) the document is filed by a person given permission under subrule (3) to file it otherwise than in accordance with this rule; or

(i) the document is in a class of documents declared in the Practice Directions to be exempt from the requirement to be filed using the ECMS; or

(j) the document is filed by a person in a class of persons declared in the Practice Directions to be exempt from the requirement to file using the ECMS.

(2) If under subrule (1) a person cannot present a document electronically using the ECMS, the person may present it to the Court —

(a) subject to rule 4, by emailing it; or

(b) subject to rule 5, by delivering it; or

(c) subject to rule 6, by posting it; or

(d) subject to rule 7, by faxing it.

(3) The Principal Registrar, for any good reason and without a formal application or request, may permit a person to present a document otherwise than in accordance with subrule (1).

(4) When giving permission under subrule (3), the Principal Registrar may give directions as to the manner in which the document is to be presented, including as to whether the document is to be presented to the Court —

(a) by emailing it; or

(b) by delivering it; or

(c) by posting it; or

(d) by faxing it.

[Rule 3 inserted: Gazette 27 Feb 2018 p. 579-81; amended: Gazette 31 Dec 2019 p. 4677-8; SL 2021/34 r. 15.]

4. Documents presented for filing using ECMS or email

(1) This rule applies to documents being presented to the Court for filing using the ECMS or email.

(2) A person must not email a document to the Court for filing unless —

(a) these rules say it cannot be filed electronically; or

(b) the Principal Registrar has permitted the person to email it.

(3) If under subrule (2) a person can email a document to the Court, the person must ensure —

(a) the document is emailed to the email address of the Court specified by the Practice Directions; and

(b) the email by which the document is sent to the Court includes the following —

(i) the name of the person sending the document;

(ii) the title and number of the proceeding to which the document relates;

(iii) a description of the document;

(iv) an explanation of the basis on which subrule (2) applies to the document.

(4) Subrule (5) applies to these documents —

(a) an affidavit;

(b) a consent to the Court doing anything;

(c) a document signed by a person who is not a party to the proceedings.

(5) A document to which this subrule applies must not be presented for filing using the ECMS or email unless it is signed and is presented in a .pdf electronic format.

(6) Subrule (7) applies to any document that is not listed in subrule (4) and that, under these rules, must be signed before it is filed.

(7) If a document to which this subrule applies is to be presented for filing —

(a) it must be signed before it is presented; and

(b) a copy of it, in .docx electronic format, that states the name of the person who is required to sign it instead of showing the person's signature, at any place in it where the signature is required, must be presented instead of the signed copy; and

(c) the electronic copy must be presented using the ECMS or, subject to subrule (2), email; and

(d) the person filing it must retain the signed copy and produce it if required to do so by the Court.

(8) A person who files a document by email must —

(a) indorse the first page of the original document with —

(i) a statement that the document is the original of a document sent by email; and

(ii) the date and time the document was sent by email;

and

(b) keep the indorsed original document; and

(c) if required to do so by the Court, produce the indorsed original document to the Court.

(9) Subject to subrules (4) to (7), all documents presented to the Court for filing using the ECMS or email must be in an electronic format specified by the Practice Directions.

(10) A document filed electronically is taken to have been filed on the day and at the time recorded by the ECMS.

(11) A document filed by email is taken to have been filed on the day and at the time when the Court receives the email.

(12) Subrule (10) does not apply to a document that is recorded in the ECMS under rule 8(1) as if it had been filed electronically.

(13) If —

(a) these rules require 2 or more copies of a document to be filed; and

(b) the document is filed electronically or by email,

the requirement in paragraph (a) is taken to have been complied with.

(14) A document that is presented for filing using the ECMS or email but not in accordance with the requirements of the ECMS and this rule is taken not to have been filed.

(15) The Court may at any time, on the application of a party or on its own initiative, order a person who has presented a document for filing using the ECMS or email —

(a) to have the original paper copy of it with the person at any conference or hearing in the course of the case concerned;

(b) to file the original paper copy of it by a means specified in the order.

[Rule 4 inserted: Gazette 27 Feb 2018 p. 581-4; amended: Gazette 31 Dec 2019 p. 4677-8.]

5. Delivering documents for filing

A person must not deliver a document to the Court for filing unless —

(a) these rules say it cannot be filed electronically; or

(b) the Principal Registrar has permitted the person to deliver it.

[Rule 5 inserted: Gazette 27 Feb 2018 p. 584.]

6. Posting documents for filing

(1) A person must not post a document to the Court for filing unless —

(a) these rules say it cannot be filed electronically; or

(b) the Principal Registrar has permitted the person to post it.

(2) If under subrule (1) a person can post a document to the Court, the person must comply with subrules (3) and (4).

(3) A document sent by post to the Court must have a cover page stating the following —

(a) the name of the person sending the document;

(b) the title and number of the proceeding to which the document relates;

(c) a description of the document;

(d) an explanation of the basis on which subrule (1) applies to the document.

(4) The document must be posted —

(a) in an A4 or larger envelope; and

(b) to the postal address of the Court specified in the Practice Directions.

[Rule 6 inserted: Gazette 27 Feb 2018 p. 584-5.]

7. Faxing documents for filing

(1) A person must not fax a document to the Court for filing unless the Principal Registrar has permitted the person to fax it.

(2) If under subrule (1) a person can fax a document to the Court, the person must comply with subrules (3) to (8).

(3) The person must use the fax number of the Court specified in the Practice Directions.

(4) A document that, with any attachments and a cover page, has more than 20 pages, must not be filed by fax and any such document received by the Court is to be taken not to have been filed.

(5) A document sent by fax to the Court must have a cover page stating —

(a) the name, postal address, document exchange number (if any), telephone number and fax number of the person sending the document; and

(b) the number of pages (including the cover page) being sent by fax.

(6) A person who files a document by fax must —

(a) indorse the first page of the original document with —

(i) a statement that the document is the original of a document sent by fax; and

(ii) the date and time the document was sent by fax;

and

(b) keep the indorsed original document and the fax machine's report evidencing the successful transmission of the document; and

(c) if directed to do so by the Court, produce the items in paragraph (b) to the Court.

(7) A document filed by fax is to be taken to have been filed on the day and at the time when the Court receives the fax.

(8) The Court may at any time, on the application of a party or on its own initiative, order a person who has faxed a document to the Court —

(a) to have the original paper copy of it with the person at any conference or hearing in the course of the case concerned;

(b) to file the original paper copy of it by a means specified in the order.

[Rule 7 inserted: Gazette 27 Feb 2018 p. 585-6.]

8. How filed paper documents are to be dealt with

(1) If —

(a) a paper copy of a document is filed in accordance with these rules; and

(b) an electronic copy of it is not filed,

the Principal Registrar may convert the document to an electronic format and record it in the ECMS as if it had been filed electronically.

(2) Subrules (3) to (6) apply to a paper version of a document filed in the Court if the document is recorded in the ECMS under subrule (1) as if it had been filed electronically.

(3) If a document is recorded in the ECMS under subrule (1) as if it had been filed electronically, the paper version of the document must be retained by the Court —

(a) for 90 days from the day it was filed; and

(b) until it is collected or the period referred to in subrule (4) expires, whichever occurs first.

(4) The person who filed the paper version of the document may collect it from the Court within 30 days after the period referred to in subrule (3)(a) expires.

(5) If the paper version of the document is not collected within the period referred to in subrule (4), a registrar may cause the document to be destroyed.

(6) If the paper version of the document is collected within the period referred to in subrule (4), the person who filed it must, unless a registrar approves the destruction of the document —

(a) keep the document; and

(b) if directed to do so by the Court, produce the document to the Court.

[Rule 8 inserted: Gazette 27 Feb 2018 p. 587; amended: Gazette 31 Dec 2019 p. 4677-8.]

Division 3 — Documents containing sensitive information

[Heading inserted: Gazette 27 Feb 2018 p. 588.]

9. Terms used

In this Division —

legislation means —

(a) a written law; or

(b) legislation of another Australian jurisdiction;

restricted document means a document the existence and the whole of the contents of which must not be known or accessible to anyone other than the person filing it and a judge, master or registrar;

restricted information means information access to which is restricted by —

(a) legislation; or

(b) an order made by a court in Australia.

[Rule 9 inserted: Gazette 27 Feb 2018 p. 588.]

10. Person to advise Court if filing sensitive document

(1) A person presenting a document to the Court for filing must advise the Court —

(a) if access to all or a part of the information in the document is restricted because —

(i) the information is restricted information; or

(ii) the person is applying under Order 67B rule 5 for an order restricting access to the information;

or

(b) if the document is a restricted document; or

(c) if the existence and content of the document must not be made accessible or known to the judge or master who is or will be trying the case in respect of which the document is filed.

(2) If a person presents a document to the Court for filing electronically, 2 or more of paragraphs (a), (b) and (c) in subrule (1) cannot apply to the document.

(3) A person wanting to advise the Court under subrule (1) must —

(a) if the person is presenting the document for filing electronically, record the advice on the ECMS and —

(i) if subrule (1)(a)(i) applies to information in the document, comply with rule 11;

(ii) if subrule (1)(a)(ii) applies to information in the document, comply with rule 12;

(iii) if subrule (1)(b) applies to the document, comply with rule 13;

(iv) if subrule (1)(c) applies to the document, comply with rule 14;

(b) otherwise comply with —

(i) rule 11 if subrule (1)(a)(i) applies to information in the document;

(ii) rule 12 if subrule (1)(a)(ii) applies to information in the document;

(iii) rule 13 if subrule (1)(b) applies to the document;

(iv) rule 14 if subrule (1)(c) applies to the document.

(4) A person who has presented a document to the Court for filing may subsequently advise the Court that 1 of paragraphs (a), (b) and (c) in subrule (1) applies to a document by asking the Principal Registrar to act under subrule (6).

(5) If under this rule the Court has been advised that 1 of paragraphs (a), (b) or (c) in subrule (1) applies to a document, it is to be presumed that the paragraph does apply to it until —

(a) its classification is changed or cancelled under subrule (6); or

(b) if an order made under Order 67B rule 5(3) applies to it, the order is cancelled.

(6) If satisfied there is good reason to do so, the Principal Registrar, by amending information on the ECMS or by taking other reasonable steps, may —

(a) classify a filed document as being a document to which 1 of paragraphs (a), (b) and (c) in subrule (1) applies;

(b) if a filed document is already such a document —

(i) change its classification; or

(ii) cancel its classification as a document to which any of paragraphs (a), (b) and (c) in subrule (1) applies.

(7) The Principal Registrar must not act under subrule (6) unless the Principal Registrar has given the person who filed the document, and any person served with the document, an opportunity to object to the action.

(8) Before acting under subrule (6), the Principal Registrar may give the person who filed the document any directions reasonably necessary to enable the Principal Registrar to properly classify the document, including directions that require the person to serve the document on 1 or more other persons.

[Rule 10 inserted: Gazette 27 Feb 2018 p. 588-90; amended: Gazette 31 Dec 2019 p. 4677-8.]

11. Documents containing restricted information

(1) This rule applies if under rule 10(1) a person advises the Court that a document presented for filing contains restricted information.

(2) If the document was filed electronically, by email or by fax, the person who filed it must, within 24 hours after filing it, do the following —

(a) file a memorandum that does the following —

(i) states —

Attention: [*Identify the document*] contains information to which access is restricted by [*the short title and provision of applicable legislation or the details of the applicable court order*].;

(ii) identifies the legislation, or court order, that restricts access to the information;

(iii) identifies the restricted information in the document;

(iv) identifies the person, or class of persons, who can have access to the information lawfully;

(v) identifies the person, or class of persons, whose access to the information is restricted;

(vi) states the conditions, if any, that the Court should impose if it were to give access to the information to any such person;

(vii) states whether the information will cease to be restricted information and, if so, when it will cease to be restricted information;

(b) if a court order restricts access to the information, file a copy of the order.

(3) If the document was filed by delivering it, the person who filed it must do the following —

(a) ensure the document has a cover sheet that includes this statement —

Attention: This document contains information to which access is restricted by [*the short title and provision of applicable legislation or the details of the applicable court order*].;

(b) within 1 day after filing it, file a memorandum that does the following —

(i) identifies the legislation, or court order, that restricts access to the information;

(ii) identifies the restricted information in the document;

(iii) identifies the person, or class of persons, who can have access to the information lawfully;

(iv) identifies the person, or class of persons, whose access to the information is restricted;

(v) states the conditions, if any, that the Court should impose if it were to give access to the information to any such person;

(c) if a court order restricts access to the information in the document, file a copy of the order within 1 day after filing the document.

(4) If the person who filed the document does not comply with subrule (2) or (3), as the case requires, the Principal Registrar may exercise the powers in rule 10(6).

(5) If a judge, master or registrar is not satisfied the document contains restricted information, the judge, master or registrar —

(a) must notify the person who filed the document accordingly; and

(b) may direct the Principal Registrar to exercise the powers in rule 10(6).

[Rule 11 inserted: Gazette 27 Feb 2018 p. 591-3.]

12. Documents containing information to which access should be restricted

(1) This rule applies if under rule 10(1) a person advises the Court that the person is applying under Order 67B rule 5 for an order restricting access to information in a document presented for filing.

(2) If the document was filed electronically, the person who filed it must, within 24 hours after filing it, file electronically an application that complies with Order 67B rule 5(2) and that applies for an order made under Order 67B rule 5(3).

(3) If the document was not filed electronically, the person who filed it must do the following —

(a) ensure the document has a cover sheet that includes this statement —

Attention: This document contains information that is the subject of an application for an order made under the *Rules of the Supreme Court 1971* Order 67B rule 5 that restricts access to it.;

(b) within 1 day after filing it, file an application that complies with Order 67B rule 5(2) and that applies for an order made under Order 67B rule 5(3).

(4) If the person who filed the document does not comply with subrule (2) or (3), as the case requires, the Principal Registrar may exercise the powers in rule 10(6).

[Rule 12 inserted: Gazette 27 Feb 2018 p. 593-4.]

13. Restricted documents

(1) This rule applies if under rule 10(1) a person advises the Court that a document presented for filing is a restricted document.

(2) If the document was filed electronically, the person who filed it must, within 24 hours after filing it, do the following —

(a) file electronically a memorandum that does the following —

(i) states —

Attention: [*Identify the document*] is a document the existence and the whole of the contents of which must not be known or accessible to anyone other than the person filing it and a judge or master.;

(ii) explains why the document is a restricted document;

(iii) if the document is a restricted document by virtue of legislation, or a court order, identify the legislation or order;

(iv) states the conditions, if any, that the Court should impose if it were to give access to the document to anyone other than the person filing it and a judge or master;

(v) states whether the document will cease to be a restricted document and, if so, when it will cease to be a restricted document;

(b) if the document is a restricted document by virtue of a court order, file electronically a copy of the order;

(c) if the document is a not a restricted document by virtue of legislation or a court order — file electronically an application that complies with Order 67B rule 5(2) and that applies for an order made under Order 67B rule 5(3).

(3) If the document was not filed electronically, the person who filed it must do the following —

(a) ensure the document has a cover sheet that includes this statement —

Attention: [*Identify the document*] is a document the existence and the whole of the contents of which must

not be known or accessible to anyone other than the person filing it and a judge or master.;

(b) within 1 day after filing it, file an application that complies with Order 67B rule 5(2) and that applies for an order made under Order 67B rule 5(3).

(4) If the person who filed the document does not comply with subrule (2) or (3), as the case requires, the Principal Registrar may exercise the powers in rule 10(6).

(5) If a judge or master is not satisfied the document is a restricted document, the judge or master —

(a) must notify the person who filed the document accordingly; and

(b) may direct the Principal Registrar to exercise the powers in rule 10(6).

[Rule 13 inserted: Gazette 27 Feb 2018 p. 594-5.]

14. Documents that are not to be accessible to judiciary

(1) This rule applies if under rule 10(1) a person advises the Court that the existence and content of a document presented for filing must not be made accessible or known to the judge or master who is or will be trying the case in respect of which the document is filed.

(2) If the document was filed electronically, the person who filed it must, within 24 hours after filing it, file electronically a memorandum that does the following —

(a) states —

Attention: [*Identify the document*] is a document the existence and content of which must not be made accessible or known to the judge or master who is or will be trying the case in respect of which it is filed.;

(b) explains why the document is such a document;

(c) states whether the document will cease to be such a document and, if so, when it will cease to be such a document.

(3) If the document was not filed electronically, the person who filed it must do the following —

(a) ensure the document has a cover sheet that includes this statement —

Attention: [*Identify the document*] is a document the existence and content of which must not be made accessible or known to the judge or master who is or will be trying the case in respect of which it is filed.;

(b) within 1 day after filing it, file a memorandum that does the following —

(i) explains why the document is such a document;

(ii) states whether the document will cease to be such a document and, if so, when it will cease to be such a document.

(4) If the person who filed the document does not comply with subrule (2) or (3), as the case requires, the Principal Registrar may exercise the powers in rule 10(6).

[Rule 14 inserted: Gazette 27 Feb 2018 p. 596-7.]

Division 4 — Miscellaneous matters

[Heading inserted: Gazette 27 Feb 2018 p. 597.]

15. Principal Registrar may delegate

(1) The Principal Registrar, in writing, may delegate all or any of the Principal Registrar's functions under this Order to 1 or more other officers of the Court.

(2) For the purposes of these rules, a decision made by a delegate of the Principal Registrar under this Order is taken to be a decision made by the Principal Registrar.

[Rule 15 inserted: Gazette 27 Feb 2018 p. 597.]

16. Principal Registrar may refer matters to judge or master

The Principal Registrar may refer a question that arises under this Order in respect of a document to a judge or master.

[Rule 16 inserted: Gazette 27 Feb 2018 p. 597.]

17. Appeals from decisions made under this Order

(1) A person who is dissatisfied by a decision made under this Order by the Principal Registrar may ask the Principal Registrar for the decision to be made afresh by a judge or master.

(2) If the Principal Registrar receives a request made under subrule (1), the Principal Registrar must refer the matter concerned to a judge or master.

[Rule 17 inserted: Gazette 27 Feb 2018 p. 597.]

Order 67B — Access to information and things held by the Court

[Heading inserted: Gazette 27 Feb 2018 p. 598.]

Division 1 — Preliminary matters

[Heading inserted: Gazette 27 Feb 2018 p. 598.]

1. Terms used

(1) In this Order —

hearing means any hearing, including a trial, held by the Court in a proceeding;

legislation means —

(a) a written law; or

(b) legislation of another Australian jurisdiction;

media manager means the person who, on behalf of the Court, manages its relations with media organisations;

media organisation means an organisation the principal purpose of which is to, and which itself does, disseminate news or information directly to the public by means of printed paper, radio, television or the internet;

media representative means a person who is employed by a media organisation;

probate application means an application for a grant, as defined in the *Non-contentious Probate Rules 1967* rule 2;

proceeding means —

(a) any case, or appeal, in the civil jurisdiction of the General Division; and

(b) any civil appeal, as defined in the *Supreme Court (Court of Appeal) Rules 2005* rule 3(1); and

(c) any proceeding on a probate application;

record means any thing or process —

(a) upon or by which information is recorded or stored; or

(b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

transcript means a transcript of an audio or audio-visual recording of a hearing in the Court.

(2) In this Order, a reference to information or to a record or thing includes a reference to a part of it.

[Rule 1 inserted: Gazette 27 Feb 2018 p. 598-9.]

2. Application of this Order

(1) This Order applies to information, records and other things held by the Court in respect of proceedings, whether or not due to a Court order.

(2) This Order, other than Division 7, applies —

(a) to any person, other than a party to a proceeding, who wants access to information or a record or other thing held by the Court in respect of a proceeding commenced on or after 1 March 2018; and

(b) to any party to a proceeding who wants access to information or a record or other thing held by the Court in respect of the proceeding, no matter when it was commenced.

(3) Despite subrules (1) and (2), this Order does not apply to these —

(a) a record or other thing —

(i) that is held by the Court as a result of a subpoena it issued in a proceeding; and

(ii) that has not been formally admitted into evidence as an exhibit, or marked for identification, in the proceeding;

(b) information, records or other things that the Court has ceased to hold in respect of proceedings;

(c) a record that —

(i) is created by or sent to the Court in respect of a proceeding for administrative purposes; and

(ii) is not a filed document; and

(iii) is not part of an index or other record of all cases in the Court.

[Rule 2 inserted: Gazette 27 Feb 2018 p. 599-600.]

3. Access to information and things under other legislation

This Order does not affect any entitlement a person has under any other legislation to be given access to information or a record or thing.

[Rule 3 inserted: Gazette 27 Feb 2018 p. 600.]

4. Order does not limit Court's general power to release information

This Order does not prevent the Court from releasing, on its own initiative, any information, record or other thing to any person, on any terms and conditions and in any manner, it thinks fit.

[Rule 4 inserted: Gazette 27 Feb 2018 p. 600.]

Division 2 — Orders restricting access

[Heading inserted: Gazette 27 Feb 2018 p. 601.]

5. Court's powers to restrict access

(1) The Court may make an order under this rule —

(a) on its own initiative; or

(b) on the application of any person.

(2) An application for an order made under subrule (3) must do the following —

(a) state the grounds for the application;

(b) identify the information, record or thing to which the order should apply;

(c) state the person, or class of persons, whose access to the information, record or thing should be restricted by the order;

(d) state any conditions that should apply if the Court were to give access to the information, record or thing;

(e) state the period for which the order should apply.

(3) The Court may make an order that restricts access to information or a record or other thing if it considers —

(a) that the information, record or thing is the subject of a pending claim that it is privileged or confidential; or

(b) that the information, record or thing is privileged or confidential; or

(c) that in the interests of justice, access to the information, record or thing should be restricted.

(4) An order made under subrule (3) must include the reasons for it and sufficient information to identify clearly —

(a) the information, record or thing to which the order applies; and

(b) the person, or class of persons, whose access to the information, record or thing is restricted by the order; and

(c) any conditions that will apply if access to the information, record or thing were to be given by the Court; and

(d) the period during which the order applies.

(5) The Court may at any time, by order, amend or cancel an order made under subrule (3).

(6) If an application is made for an order made under subrule (3) in respect of information or a record or other thing, access to the information, record or thing is taken to be unavailable to all but the Court and the applicant until the application is decided.

[Rule 5 inserted: Gazette 27 Feb 2018 p. 601-2.]

Division 3 — Entitlements to access

[Heading inserted: Gazette 27 Feb 2018 p. 602.]

6. Entitlements of every person

(1) For the purposes of this rule, a person's access to information or a document is restricted if the person's access to it is restricted by —

(a) legislation; or

(b) an order made by a court in Australia.

(2) Unless the person's access to the information is restricted, any person is entitled to have access to the information listed in the Table held by the Court.

Table

A.	**General Division (general jurisdiction) and Court of Appeal information**
1.	Whether a named person is or is not a party to a proceeding.
2.	Whether a named person is or is not a witness in a proceeding.
3.	Whether an identified record or thing that relates to a proceeding is or is not held by the Court.

4.	In respect of an identified proceeding — (a) the name of each party to it; (b) the name of the representative (if any) of each party to it; (c) the date on which it was commenced; (d) the matter reference number assigned to it by the Court; (e) the title of any filed document held in relation to it; (f) the date on which a filed document was filed; (g) the date, time and nature of any hearing in it; (h) the current status of it.
B.	**General Division (non-contentious probate jurisdiction) information**
1.	Whether a named person has made a probate application.
2.	Whether an identified record or thing that relates to a probate application is or is not held by the Court.
3.	In respect of an identified probate application — (a) the name of the applicant; (b) the name of the representative (if any) of the applicant; (c) the date on which it was made; (d) the matter reference number assigned to it by the Court; (e) the title of any filed document held in relation to it; (f) the date on which a filed document was filed; (g) the date, time and nature of any hearing in it; (h) the current status of it.

(3) Unless the person's access to the document is restricted, any person is entitled to have access to any of the filed documents, listed in the Table, that commenced a proceeding.

Table

A.	**General Division (general jurisdiction) documents**
1.	A writ indorsed under Order 6 rule 1 or indorsed with a statement of claim.
2.	An originating summons or motion, or other document, that commenced a proceeding under any of these Acts — (a) the *Corporations Act 2001* (Commonwealth); (b) the *Family Provision Act 1972*; (c) the *Transfer of Land Act 1893*; (d) the *Trustees Act 1962*.
3.	An appeal notice.
B.	**Court of Appeal document**
1.	An appeal notice.
C.	**General Division (non-contentious probate jurisdiction) documents**
1.	The originating motion that applies for a grant (as defined in the *Non-contentious Probate Rules 1967* rule 2).

(4) Unless the person's access to the document is restricted, any person is entitled to have access to —

(a) any of the documents listed in Part A of the Table held by the Court in respect of a proceeding that was commenced by means of a document listed in Part A of the Table to subrule (3);

(b) any of the documents listed in Part B of the Table held by the Court in respect of a proceeding that was commenced by means of a document listed in Part B of the Table to subrule (3);

(c) any of the documents listed in Part C of the Table held by the Court in respect of a proceeding that was commenced by means of a document listed in Part C of the Table to subrule (3).

Table

A.	**General Division (general jurisdiction) documents**
1.	A memorandum of appearance.
2.	A notice of change of solicitor.
3.	A notice of intention to act in person.
4.	A notice of ceasing to act.
5.	A notice of discontinuance.
6.	A list of exhibits.
7.	A list of things tendered to the Court in a hearing in the proceeding but not admitted into evidence.
8.	A judgment of the Court and the reasons for it.
9.	An order of the Court.
10.	A transcript.
11.	A notice of respondent's intention filed under Order 65.
12.	A discontinuance notice filed under Order 65.
B.	**Court of Appeal documents**
1.	A notice of a respondent's intention.
2.	A notice of a respondent's cross appeal.
3.	A discontinuance notice.
4.	A list of exhibits referred to in the Court of Appeal.
5.	A judgment of the Court of Appeal and the reasons for it.
6.	An order made by the Court of Appeal.
C.	**General Division (non-contentious probate jurisdiction) documents**
1.	The grant (as defined in the *Non-contentious Probate Rules 1967* rule 2) with, if applicable, the will attached.
2.	Any order dismissing the originating motion.

(5) Despite subrules (2) to (4), a person using the website called the eCourts Portal of Western Australia is entitled to have access to any information or record to which the website, if used lawfully, allows the user to have access.

(6) Despite subrules (2) to (4), an authorised user of the ECMS is entitled to have access to any information or record to which the system, if used lawfully, allows the user to have access.

[Rule 6 inserted: Gazette 27 Feb 2018 p. 602-6; amended: Gazette 31 Dec 2019 p. 4677-8.]

7. Entitlements of parties

(1) For the purposes of this rule, a party's access to information or a record or other thing is restricted if the party's access to it is restricted by —

(a) legislation; or

(b) an order made by a court in Australia.

(2) Unless the party's access to the information, record or thing is restricted, a party to a proceeding is entitled to have access to any of the following held by the Court in respect of the proceeding —

(a) a filed document;

(b) a list of exhibits;

(c) an exhibit;

(d) a list of things tendered to the Court in a hearing in the proceeding but not admitted into evidence;

(e) any thing on the list referred to in paragraph (d);

(f) a transcript.

[Rule 7 inserted: Gazette 27 Feb 2018 p. 606-7.]

Division 4 — Access with the Court's permission

[Heading inserted: Gazette 27 Feb 2018 p. 607.]

8. Access with the Court's permission

A person who, for any reason, is not entitled to have access to information or a record or other thing under Division 3 may have access to it only —

(a) with the permission of the Court given under rule 9 on an application made to the Court under rule 11; or

(b) with the permission of the media manager given under rule 10 on an application made to the media manager under rule 11.

[Rule 8 inserted: Gazette 27 Feb 2018 p. 607.]

9. When Court can give permission

(1) This rule applies if an application for permission is made in writing to the Court under rule 11.

(2) This rule must be read with rule 13.

(3) The Court must give permission if satisfied —

(a) the application —

(i) relates to information or a record or other thing that was considered by the Court in the proceeding to which the application relates; or

(ii) relates to the transcript of the whole or a part of a hearing in that proceeding that the applicant was entitled to attend;

and

(b) the application does not relate to an audio or audio-visual recording of a hearing in that proceeding; and

(c) if the application relates to information or a record or other thing that was considered by the Court in that proceeding but was not admitted into evidence or was struck out — that giving permission would not prejudice or adversely affect any person; and

(d) that giving permission would not breach —

(i) any legislation; or

(ii) an order made by a court in Australia;

and

(e) the arrangements necessary to give the applicant access would not —

(i) be unreasonably expensive or time consuming for the Court or a party; or

(ii) unduly impede the efficient conduct of the proceeding;

and

(f) there is no other good reason to refuse the application.

(4) If the application does not relate to information or a record or other thing referred to in subrule (3)(a) or to a recording referred to in subrule (3)(b), the Court may give permission if satisfied —

(a) as to the matters in subrule (3)(d) to (f); and

(b) there is a good reason to do so.

(5) If under subrule (3)(a)(ii) the Court is not satisfied the applicant was entitled to attend the hearing, the Court may nevertheless give permission if satisfied —

(a) as to the other matters in subrule (3); and

(b) there is a good reason to do so.

(6) If the application relates to a recording referred to in subrule (3)(b) then —

(a) if the recording has been broadcast on the Court's website, the Court may give permission if satisfied there is no good reason to refuse the application; or

(b) if the recording has not been broadcast on the Court's website, the Court may give permission only if satisfied —

(i) as to the matters in subrule (3)(d) to (f); and

(ii) there is an exceptional reason to do so.

[Rule 9 inserted: Gazette 27 Feb 2018 p. 607-9.]

10. When media manager can give permission

(1) This rule applies if —

(a) a media representative makes an oral application for permission under rule 11 to the media manager; or

(b) a media representative makes a written application for permission under rule 11 to the Court that the Court refers to the media manager to deal with.

(2) This rule must be read with rule 13.

(3) The media manager must give permission if satisfied —

(a) the applicant is a media representative; and

(b) the Court has already given another media representative permission to have access to the information, record or other thing to which the applicant wants access; and

(c) neither the other media representative nor the other media representative's employer is a party to the proceeding in respect of which that information, record or other thing is held by the Court; and

(d) neither the applicant nor the applicant's employer is a party to that proceeding.

(4) If the media manager gives permission under subrule (3), it must be on the same terms and conditions (if any) as those on

which the Court gave permission to the other media representative.

[Rule 10 inserted: Gazette 27 Feb 2018 p. 609-10.]

Division 5 — Applications for access

[Heading inserted: Gazette 27 Feb 2018 p. 610.]

11. Applying for access

(1) A person using the Court's website —

(a) may have access to any information or record to which the website, if used lawfully, allows the user to have access; and

(b) need not apply under this rule for access to the information or record.

(2) A person who is an authorised user of the ECMS —

(a) may have access to any information or record related to proceedings to which that system, if used lawfully, allows the person to have access; and

(b) need not apply under this rule for access to the information or record.

(3) A person who, under Division 3 or 4, wants access to information or a record or other thing must apply under this rule.

(4) The application is taken to be an interlocutory application in the proceeding in respect of which the information, record or other thing is held by the Court, whether or not the applicant is a party to that proceeding.

(5) Despite subrule (4), Order 4A rule 4A does not apply to the application.

(6) Despite Order 59 rules 1(1) and 3, the application may be made by letter to the Principal Registrar.

(7) If an application is made under subrule (6), the Principal Registrar may require the applicant to file a motion or summons in accordance with Order 59 rule 3(1)(b).

(8) A person may apply orally to the Court for access to information or a record or thing if —

(a) the person is entitled under Division 3 to have access to the information, record or other thing; and

(b) no fee is payable in respect of the application.

(9) A media representative may apply orally to the media manager for access to information if the media representative —

(a) is entitled under rule 6 to have access to the information; and

(b) gives the media manager the case number of the proceeding in respect of which the information is held by the Court.

(10) Every written application must be accompanied by the prescribed fee (if any).

(11) Every application must —

(a) describe clearly —

(i) the information, record or other thing to which access is wanted; and

(ii) the proceeding in respect of which the information, record or other thing is held by the Court;

and

(b) if the applicant is a media representative, must state —

(i) that fact; and

(ii) whether the applicant or the applicant's employer is a party to the proceeding in respect of which the information, record or other thing is held by the Court;

and

(c) if it is for access to information or a record, state the format (such as paper or digital) in which the applicant, if allowed access, would prefer to be given the information or record.

(12) Every application for permission to have access must state the reasons why access is wanted.

(13) The applicant need not serve the application on, or give notice of it to, any person unless the Court orders otherwise under rule 12.

[Rule 11 inserted: Gazette 27 Feb 2018 p. 610-13; amended: Gazette 31 Dec 2019 p. 4677-8.]

12. Court's powers as to applications for permission

(1) This rule applies if a written application is made to the Court under rule 11 for permission to have access.

(2) The Court —

(a) may order the applicant to provide additional information in the form of an affidavit;

(b) may order the applicant to serve on a person specified in the order —

(i) the application; and

(ii) a notice giving the person an opportunity to give the Court submissions about the application;

(c) may request any person to give it submissions about the application;

(d) may decide the application on the basis of the documents filed without requiring the applicant to attend a hearing.

(3) The Court is not required to determine an application until after the applicant complies with an order made under subrule (2).

[Rule 12 inserted: Gazette 27 Feb 2018 p. 613.]

13. How applications are determined

(1) This rule applies to every application made under rule 11.

(2) The Court or the media manager, as the case may be, may grant the application —

(a) in whole or in part; and

(b) with or without conditions.

(3) If the Court or the media manager, as the case may be, is satisfied the applicant is entitled under Division 3 to have the access wanted, the Court or media manager must grant the application.

(4) If the Court is satisfied the applicant needs permission to have the access wanted, it must determine the application in accordance with rule 9.

(5) If the media manager is satisfied the applicant needs permission to have the access wanted, the media manager must determine the application in accordance with rule 10.

(6) If the media manager refuses a written application —

(a) the media manager may refer it to the Court to determine afresh; and

(b) the refusal does not affect the applicant's right to apply to the Court for access.

[Rule 13 inserted: Gazette 27 Feb 2018 p. 613-14.]

Division 6 — How access is given

[Heading inserted: Gazette 27 Feb 2018 p. 614.]

14. How and when the Court gives access

(1) For the purposes of this rule, an applicant is allowed access to information or a record or other thing if, on an application made under Division 5 —

(a) it is determined the applicant is entitled to have access to the information, record or other thing; or

(b) the applicant is given permission to have access to the information, record or other thing.

(2) If an applicant is allowed access to information, the Court may give the applicant the information either orally or in writing.

(3) If an applicant is allowed access to a record, the Court must give the applicant —

(a) a reasonable opportunity to view or listen to it or both and, if necessary, the means by which to do so; and

(b) a copy of it in, if practicable, the format preferred by the applicant.

(4) If an applicant is allowed access to a thing that is not a record, the Court must give the applicant a reasonable opportunity —

(a) to inspect it; and

(b) to record an image of it.

(5) Any physical access given under this rule must be given during office hours at the Central Office.

(6) This rule does not prevent the Court from giving access to information or a record by electronic means.

[Rule 14 inserted: Gazette 27 Feb 2018 p. 614-15.]

Division 7 — Access by non-parties to documents in cases commenced before 1 March 2018

[Heading inserted: Gazette 27 Feb 2018 p. 615.]

15. Application of this Division

This Division applies to a person, other than a party to a proceeding, who wants access to information or a record or other thing held by the Court in respect of a proceeding commenced before 1 March 2018.

[Rule 15 inserted: Gazette 27 Feb 2018 p. 615.]

16. Documents that can be inspected or copied

(1) Any person referred to in rule 15 is, on payment of the prescribed fee, entitled during office hours to inspect and be given a copy of any of these filed documents —

(a) any writ, and the statement of claim (if any) indorsed on the writ under Order 6 rule 3;

(b) any originating application made under the *Corporations Act 2001* (Commonwealth);

(c) any appeal notice filed under the *Supreme Court (Court of Appeal) Rules 2005*;

(d) any judgment or order given or made in court;

(e) with the leave of the Court or a registrar, any other document.

(2) An application for leave made under subrule (1)(e) need not be served on any person.

(3) This rule does not entitle a person to search, inspect or take a copy of any part of a document that contains information that the person is prevented by an Act from possessing.

[Rule 16 inserted: Gazette 27 Feb 2018 p. 615-16.]

Division 8 — Miscellaneous matters

[Heading inserted: Gazette 27 Feb 2018 p. 616.]

17. Registrars' decisions may be dealt with by judge or master

(1) In this rule —

access application means an application made under rule 11.

(2) A person dissatisfied by a decision made under this Order by a registrar on an access application may ask the registrar for the access application to be dealt with in a new hearing by a judge or master.

(3) If a registrar receives a request made under subrule (1), the registrar must refer the matter concerned to a judge or master.

[Rule 17 inserted: Gazette 27 Feb 2018 p. 616.]

Order 68 — Sittings, vacations and office hours

1. Civil sittings

(1) The civil sittings of the Court shall be held at times fixed by rule of court, from year to year.

(2) If the day appointed for the commencement of sittings is a day on which the offices of the Court are closed, the sittings shall commence upon the next day on which the offices are open.

[Rule 1 amended: Gazette 29 Apr 2005 p. 1793.]

2. Criminal sittings

The criminal sittings of the Supreme Court to be held at Perth, shall commence in each month on a day to be fixed, from year to year, by rule of court; provided that the day of commencement of any such monthly sittings may, at any time prior to such date, be altered to any other day in the month of such sittings by order of the Chief Justice published in the *Government Gazette*.

3. Court vacations

The vacations to be observed in the Supreme Court shall be the Christmas Vacation, the Easter Vacation, and the Winter Vacation. The Christmas Vacation, shall commence on 24 December and terminate on the second Monday in the January next following; the Easter Vacation shall commence on Good Friday and terminate on Easter Monday, and the Winter Vacation shall commence on a day in June, July or August fixed by rule of court, from year to year, and terminate on a day 14 days after the day so fixed.

[Rule 3[2] amended: Gazette 23 Sep 1983 p. 3798; 26 Aug 1994 p. 4413.]

4. Days included in sitting and vacation

The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

5. When Court's offices are open

The several offices of the Supreme Court shall be open on every day of the year, except Saturdays and Sundays, Good Friday and Monday in Easter week, Christmas Day and all Public Service holidays.

[Rule 5 amended: Gazette 9 Nov 1973 p. 4165; 26 Aug 1994 p. 4413.]

6. Office hours

The office hours of the several offices of the Court shall be from 9 a.m. to 4 p.m.; provided that the Chief Justice may direct that the offices or any office of the Court shall not be open between 1 p.m. and 2 p.m.

[Rule 6 amended: Gazette 10 Nov 1995 p. 5247.]

7. Vacation Judge

(1) One or more of the judges shall be selected before the commencement of each vacation for the hearing during the vacation of all such applications as may require to be heard.

(2) Any other judge may sit in vacation for the transaction of judicial business in addition to, or in substitution for, the Vacation Judge.

Order 69 — Paper, printing, notice, and copies

1. Printing of documents, rules as to

(1) Where by any provisions of these rules a document is required or allowed to be printed, that document must be produced, subject to the provisions of rule 2, by means of printing or typewriting (otherwise than by means of a carbon).

(2) For the purpose of these rules a document shall be deemed to be printed if it is produced by lithography, stencil duplicating or any other mechanical means, except typewriting or photography, giving uniform pages of clear sharp and legible type.

(3) Any document produced by a photographic or similar process giving a positive, clear, and permanent representation free from blemishes, shall to the extent that it contains a copy of any printed or typewritten matter be treated for the purpose of these rules as if it were printed.

[Rule 1 amended: Gazette 27 Feb 2018 p. 616-17.]

2. Requirements as to documents prepared by parties

(1A) For the purposes of documents filed electronically, this rule applies with any necessary changes.

(1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court must, subject to any directions given from time to time by the Principal Registrar —

(a) be legibly and clearly typewritten or printed without blotting, erasure or such alterations as cause material disfigurement; and

(b) have a space of not less than 6 mm between each line; and

(c) be upon white paper of good and durable quality and capable of receiving ink writing; and

(ca) comply with subrule (1AA); and

(d) be on either —

(i) one side only of the paper with a margin of not less than 30 mm on the left hand side of each sheet; or

(ii) both sides of the paper with a margin of not less than 30 mm on the left hand side of the front of each sheet and not less than 30 mm on the right hand side of the back of each sheet;

and

(da) commence on a fresh sheet; and

(e) have each page numbered; and

(f) have the sheets fastened only at the top left hand corner; and

(g) not have the sheets folded; and

(h) unless the document is in a prescribed form, have shown on the first sheet, immediately following each other —

(i) at the top across the full width from the left hand margin, the heading and title of the proceeding; and

(ii) a short description of the document (including, in the case of an affidavit, the name of the deponent and the purpose for which the affidavit is filed),

and in a space not longer than 50 mm —

(iii) the date of the document; and

(iv) the name of the party; and

(v) if the document is required to state it, the party's geographical address in accordance with Order 71A; and

(vi) the party's service details in accordance with Order 71A.

(1AA) The textual content of a document, including any endnotes, footnotes and quotations, must be typewritten or printed using at least the size of print used for these rules (12 point Times New Roman).

(1AB) Except as provided in subrule (1AC), a document may show an abbreviation of the title of the proceeding which is sufficient to identify the proceeding.

(1AC) Subrule (1AB) does not apply to the following documents —

(a) an originating process;

(b) a document to be served on a person who is not a party to a proceeding;

(c) a final judgment or order.

[(1a) deleted]

(2) The registrar may refuse to file or accept a document to which subrule (1) applies if it does not comply with the provisions of that subrule, and the costs of the document may be disallowed upon taxation.

[(3) deleted]

(4) Any notice, request or consent required or allowed by these rules may not be given orally except with the leave of the Court.

(5) The Court may require —

(a) any document required for use in the Court to be printed or otherwise produced in any particular manner that it thinks fit; or

(b) 1 or more paper versions of any document that has been filed electronically to be delivered to the Central Office.

[Rule 2 amended: Gazette 7 Dec 1973 p. 4489; 30 Nov 1984 p. 3952; 15 Dec 1989 p. 4520; 24 Oct 1995 p. 4919; 21 Feb 2007 p. 575-6; 28 Jun 2011 p. 2552; 24 May 2017 p. 2607; 27 Feb 2018 p. 617; SL 2020/242 r. 8.]

*[**3.** Deleted: Gazette 27 Feb 2018 p. 617.]*

4. Copies of documents for other parties

(1) Where a document prepared by a party for use in the Court is printed the party by whom it was prepared must, on receiving a request from any other party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof not exceeding 10, as may be specified in the request.

(2) The proper charges for printed copies shall be calculated at the rate of fifty cents ($0.50) per page.

(3) Where a document prepared by a party for use in the Court is typewritten the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it or the relevant extract therefrom.

(4) The copy must be ready for delivery within 48 hours after a request for it, together with an undertaking to pay the proper charges, is received, and must be supplied thereafter on payment of those charges.

5. Requirements as to copies

(1) A party who supplies a copy of a document under this Order must indorse the copy with the party's service details before supplying it.

(2) The party by whom a copy is supplied under this Order, or if he sues or appears by a solicitor, his solicitor shall be answerable for the copy being a true copy of the original.

[Rule 5 amended: Gazette 21 Feb 2007 p. 576; 27 Feb 2018 p. 617.]

6. Copies of affidavits on certain *ex parte* applications

(1) Where upon an *ex parte* application an order is made against or affecting the rights of a person, that person may obtain a copy of the affidavits filed by the applicant in support of his application upon making a written application to the party by whom the copies are to be furnished or his solicitor, with an undertaking to pay the proper charges.

(2) The party who made the application must furnish the copies upon payment of the proper charges forthwith after receiving the written request and undertaking mentioned in subrule (1) or within such time as may be specified in the request or may be directed by the Court.

[Rule 6 amended: Gazette 28 Jun 2011 p. 2552.]

Order 70 — Disability

1. Terms used

In this Order unless the contrary intention appears —

GAA Act means the *Guardianship and Administration Act 1990*;

person under disability means —

(a) a person who is an infant; or

(b) a represented person; or

(c) a person not being a person referred to in paragraph (a) or (b), who, by reason of mental illness, defect or infirmity, however occasioned, is declared by the Court to be incapable of managing their affairs in respect of any proceedings to which the declaration relates;

represented person means a person in respect of whom a guardian or administrator has been appointed under the GAA Act with authority to do either or both of the following —

(a) as the next friend of the represented person, to commence, conduct or settle on behalf of the represented person specified proceedings, some proceedings or all proceedings;

(b) as the guardian *ad litem* of the represented person, to defend or settle specified proceedings, some proceedings, or all proceedings, that are taken against the represented person.

[Rule 1 inserted: Gazette 22 Jul 1994 p. 3746; amended: SL 2020/242 r. 9(1)-(3).]

2. Persons under disability suing or defending

(1) Except as provided in subrule (4) a person under disability —

(a) cannot bring, or make a claim in, any proceedings except by the person's next friend; and

(b) cannot defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order, notice of which has been served on the person, except by the person's guardian *ad litem*.

(2) Subject to the provisions of these rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these rules to be done by a party to the proceedings must or may, if the party is a person under disability, be done by the person's next friend or guardian *ad litem*.

(3) A next friend or guardian *ad litem* of a person under disability must act by a solicitor.

(4) A judge may by order permit an infant to sue or defend or take part in any proceedings to which the order relates, without a next friend or guardian *ad litem* on being satisfied that in the circumstances of the case it is proper to do so.

(5) If a person under disability is a represented person, the next friend or guardian *ad litem* of the represented person in any proceedings must be —

(a) a guardian or administrator of the represented person authorised under the GAA Act Part 5 or 6 to act as next friend or guardian *ad litem*, as the case may be, in those proceedings; or

(b) some other person appointed by the Court to be the next friend or guardian *ad litem*, as the case may be, in those proceedings.

(6) An appointment by the Court under subrule (5)(b) may be —

(a) of its own motion; or

(b) on an application made under rule 5.

(7) For the purposes of subrule (6)(b) the Court may vary the requirements of rule 5 as it considers appropriate in the circumstances.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2552; SL 2020/242 r. 9(4)-(6).]

3. Appointment of next friend or guardian *ad litem*

(1) This rule does not apply in relation to a probate action.

(2) Save as provided by subrules (5) and (6) or by rule 5, an order appointing a person next friend or guardian *ad litem* of a person under disability is not necessary for the purpose of a proceeding to which this rule applies.

(3) If a person under disability is a represented person, a guardian or administrator authorised under the GAA Act Part 5 or 6 to act as next friend or guardian *ad litem*, as the case may be, of the represented person in the proceedings is the next friend or guardian *ad litem*, as the case may be.

(4) Subrule (3) does not apply, in a case to which subrule (5) or (6) or rule 6 applies, if some other person is appointed by the Court to be the next friend or guardian *ad litem*, as the case may be, of the represented person in those proceedings.

(5) Where a person has been or is next friend or guardian *ad litem* of a person under disability in any proceedings, no other person is entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing another person such friend or guardian in substitution for the person previously acting in that capacity.

(6) Where, after the commencement of any proceedings, a party to the proceedings becomes a person under a disability, an application must be made to the Court for the appointment of a next friend or guardian *ad litem*, as the case may be, of that party.

(7) Except where the next friend or guardian *ad litem* of a person under disability has been appointed by the Court, is a guardian or administrator referred to in subrule (3), or is the Public

Trustee, the documents specified in subrule (8) must be filed before —

(a) the name of any person can be used in a cause or matter as next friend of the person under disability; and

(b) an appearance can be entered in a cause or matter for the person under disability; and

(c) the person under disability is entitled to appear by the person's guardian *ad litem* on the hearing of a petition, summons or motion which, or notice of which, has been served on the person.

(8) The documents referred to in subrule (7) are as follows —

(a) a written consent to be next friend or guardian *ad litem*, as the case may be, of the person under disability, signed by the person proposing to act as such friend or guardian; and

(b) an affidavit by the solicitor for the person under disability deposing —

(i) that the solicitor knows or believes, as the case may be, that the person to whom the affidavit relates is an infant or a represented person, stating (in the case of a represented person) the grounds of that knowledge or belief; and

(ii) that the person named in the affidavit as next friend or guardian *ad litem*, as the case may be, has no interest in the cause or matter in question adverse to that of the person under disability; and

(iii) that in the case of an infant (who is not a represented person) who has attained the age of 14 years, the infant consents to the person named in the affidavit acting as next friend or guardian *ad litem*, as the case may be.

[(c) deleted]

(9) If the person who is the next friend or guardian *ad litem*, as the case may be, of a represented person and is authorised under the GAA Act Part 5 or 6 to conduct proceedings in a cause or matter in the name of the represented person or on behalf of the represented person, a copy of the order made under the GAA Act Part 5 or 6 giving the authority must be filed before —

(a) the name of any person can be used in the cause or matter as next friend of the represented person; and

(b) an appearance can be entered in a cause or matter for the represented person; and

(c) the represented person is entitled to appear by the person's guardian *ad litem* on the hearing of a petition, summons or motion which, or notice of which, has been served on the person.

[Rule 3 amended: Gazette 22 Jul 1994 p. 3746-8; 28 Jun 2011 p. 2552-3; SL 2020/242 r. 9(7)-(13).]

4. Special provisions for probate actions

(1) This rule applies in relation to a probate action.

(2) Except as provided in subrule (3), a person must not act in a probate action as next friend or guardian *ad litem* of a person under disability unless appointed to so act by the Court.

(3) A person may act as next friend or guardian *ad litem* in a probate action without an order of the Court where —

(a) in the case of a represented person, the person is the guardian or administrator authorised under the GAA Act Part 5 or 6 to conduct legal proceedings in the name of the represented person;

(b) in the case of an infant (who is not also a represented person) the person is the statutory or testamentary guardian of the infant;

(c) in the case of an infant who has attained the age of 16 years (who is not a represented person) nobody is

qualified to be such next friend or guardian by virtue of paragraph (b) and the person is one of the next of kin of the infant and has been appointed by the infant to act as the infant's next friend or guardian *ad litem*.

(4) Where a person is entitled to act as next friend or guardian *ad litem* of a person under disability without an order of the Court the writ beginning the action (where such person is the plaintiff) must not be issued, and an appearance must not be entered for the person in the action (where the person is a defendant, intervener or person cited) without the consent of a master.

(5) On the application for a consent under subrule (4) there must be produced to the master, in the case of a represented person a copy of the order under the GAA Act Part 5 or 6 authorising the next friend or guardian *ad litem* to conduct legal proceedings in the name of the represented person, and in the case of an infant —

(a) where the next friend or guardian *ad litem* is the statutory or testamentary guardian of the infant, an affidavit deposing to the guardianship, and the age of the infant, and showing that the guardian has no interest in the action adverse to that of the infant;

(b) where paragraph (a) does not apply —

(i) the appointment by the infant;

(ii) the written consent to act as next friend or guardian *ad litem*, as the case may be, of the person so appointed;

(iii) an affidavit deposing to the age of the infant and proving the fitness and willingness of the proposed next friend or guardian *ad litem* to act as such and that the proposed next friend or guardian *ad litem* has no interest in the action adverse to that of the infant, and is a next-of-kin of the infant.

[Rule 4 amended: Gazette 30 Nov 1984 p. 3952; 22 Jul 1994 p. 3748; 30 Jun 2003 p. 2631; 28 Jun 2011 p. 2552 and 2555; SL 2020/242 r. 9(14)-(17).]

5. Procedure on no appearance by person under disability

(1) Where —

(a) in an action against a person under disability begun by writ, or by originating summons to which an appearance is required to be entered, no appearance is entered for that person; or

(b) the defendant in an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no appearance is entered for that person,

the plaintiff or defendant, as the case may be, before proceeding further with the action or counterclaim must, after the time limited (as respects the person under disability) for appearing, make an application to the Court for an order appointing a guardian *ad litem* of that person, and giving consequential directions.

(2) Where a party to an action has served on a person under disability who is not already a party to the action, a third party notice within the meaning of Order 19 and no appearance is entered by that person to the notice, the party serving the notice before proceeding further with the third party proceedings must make an application to the Court after the time limited (as respects the person under disability) for appearing for an order appointing a guardian *ad litem* of that person and giving consequential directions.

(3) Where in any proceedings against a person under disability begun by motion or by originating summons to which no appearance need be entered, that person does not appear by a guardian *ad litem* at the hearing of the motion or summons, the Court hearing it may appoint a guardian *ad litem* of that person

in the proceedings, or direct that an application be made for the appointment of such a guardian.

(4) At any stage in proceedings under any judgment or order, notice of which has been served on a person under disability, the Court may, if no appearance is entered for that person, appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made for the appointment of such a guardian.

(5) An application under subrules (1) or (2) must be supported by evidence proving —

(a) that the person to whom the application relates is a person under disability; and

(b) that the person proposed as guardian *ad litem* consents and is a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability; and

(c) that the writ, originating summons, defence and counterclaim, or third party notice, as the case may be, was duly served on the person under disability; and

(d) subject to subrule (6) that notice of the application was, after the expiration of the time limited for appearance, and at least 7 days before the day named in the notice for hearing the application, duly served on the person under disability.

(6) The Court may order that notice of an application under subrules (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian *ad litem* pursuant to a direction of the Court under subrule (3) or (4) must be supported by evidence proving the matters referred to in subrule (5)(b).

[Rule 5 amended: Gazette 28 Jun 2011 p. 2552-3; SL 2020/242 r. 9(18) and (19).]

6. Time for application by person under disability to discharge or vary order under O. 18 r. 7

An application to the Court on behalf of a person under disability on whom an order made *ex parte* under Order 18 rule 7 has been served, for the discharge or variation of the order must be made —

(a) if a next friend or guardian *ad litem* is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;

(b) if there is no next friend or guardian *ad litem* acting for that person in that cause or matter, within 14 days after the appointment of such friend or guardian to act for that person.

[Rule 6 amended: SL 2020/242 r. 9(20).]

7. Removal of next friend or guardian

(1) The Court may of its own motion or on the application of a party to any proceedings or of any other person remove a next friend or guardian *ad litem*, and may stay proceedings until a next friend or guardian *ad litem* in place of the one removed has been appointed.

(2) An application under this rule must be by summons which, unless the Court otherwise orders, must be served on the next friend or guardian *ad litem* whose removal is sought and on the person under disability.

[Rule 7 amended: SL 2020/242 r. 9(21).]

8. No implied admission from pleading

Despite anything in Order 20 rule 14(1), a person under disability is not taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that

the allegation was not traversed in the pleadings of the person under disability.

[Rule 8 inserted: SL 2020/242 r. 9(22).]

9. Discovery and interrogatories

Orders 26 and 27 apply to a person under disability and to the person's next friend or guardian *ad litem*.

[Rule 9 amended: SL 2020/242 r. 9(23).]

10. Settlement etc. of action by person under disability

(1) No settlement or compromise, and no acceptance of money paid into court, whenever entered into or made, in any cause or matter (other than an appeal to the Court of Appeal) in which there is a claim by or on behalf of or against a person under disability, is valid unless it is approved by the Court.

(2) An application for approval under subrule (1) —

(a) if made before the hearing of a cause or matter, must be by summons in chambers;

(b) if made during the trial of an action or issue, must be to the trial judge on motion,

and must be supported by affidavit and by the opinion of an independent counsel; but the Court may dispense with the necessity of obtaining counsel's opinion.

(3) In this rule ***settlement*** includes an acceptance of an offer to consent to judgment.

[Rule 10 inserted: Gazette 7 Oct 1977 p. 3602; amended: Gazette 29 Apr 2005 p. 1795; 28 Jun 2011 p. 2552; SL 2020/242 r. 9(24) and (25).]

10A. Settlement etc. of appeal by person under disability

If a person under disability is a party to an appeal to the Court of Appeal, any settlement or compromise of the appeal is subject to the *Supreme Court (Court of Appeal) Rules 2005*.

[Rule 10A inserted: Gazette 29 Apr 2005 p. 1793.]

11. Settlement etc. before action commenced

(1) Where a claim which is enforceable by proceedings in the Court is made by or on behalf of or against a person under disability, and before proceedings to enforce the claim are commenced an agreement is reached for settlement or compromise of the claim, and it is desired to obtain the Court's approval to the agreement for settlement or compromise the next friend of the person under disability or the person making the claim against the person under disability may issue an originating summons for —

(a) approval of the settlement or compromise, and for such orders and directions as may appear necessary for the protection and investment of any property or funds relating to the settlement or compromise and the application of the income and/or capital for the benefit of the person under disability; or

(b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule an application is made in respect of a claim under the *Fatal Accidents Act 1959*, the originating summons must include the particulars mentioned in section 8 of that Act.

12. Control of money recovered for person under disability

(1) Where —

(a) in any proceedings money is recovered by or on behalf of or is adjudged or ordered or agreed to be paid to or for the benefit of a person under disability; or

(b) in any proceedings money paid into court is accepted by or on behalf of a plaintiff who is a person under disability; or

(c) in an application under rule 11(1) the Court has ordered the payment into court or investment of any moneys relating to a settlement or compromise,

the money must, unless otherwise ordered by the Court, be paid to the Public Trustee for investment on behalf of the person under disability, and if the Court so orders may be invested by the Public Trustee in investments outside the Common Account established under the *Public Trustee Act 1941*.

(2) The Court may at any time, and from time to time, give directions for the application of the income or of the capital and income of the investment for the maintenance, welfare, advancement, or otherwise for the benefit of the person under disability.

[Rule 12 amended: Gazette 12 Jun 2012 p. 2452; SL 2020/242 r. 9(26).]

13. Personal service on person under disability

(1) Where in any proceedings, a document is required to be served personally on any person and that person is a person under disability then, subject to Order 26 rule 15(3) and Order 27 rule 8(3), personal service must be effected in accordance with this rule.

(2) Where the person under disability has a next friend or guardian *ad litem* in the proceedings the document may be served on such next friend or guardian.

(3) If the person to be served is a person under disability only because of infancy and has no next friend or guardian *ad litem* in the proceedings, the document may be served —

(a) if the person is aged 16 years or upwards, on the person; or

(b) on one of the person's parents or the person's guardian; or

(c) if the person has no parent or guardian, on the person with whom the person resides or in whose care the person is.

(4) If the person to be served is a represented person as defined in the GAA Act section 3(1) and has no next friend or guardian *ad litem* in the proceedings, the document may be served —

(a) on the Public Trustee if the person is a represented person as defined in the *Public Trustee Act 1941* section 2; or

(b) on the person with whom the represented person resides or in whose care the person is.

(5) Notwithstanding anything in subrules (2), (3) and (4) the Court may order that a document which has been, or is to be, served on the person under disability, or on a person other than a person mentioned in that subrule is taken to be duly served on the person under disability.

(6) A document served pursuant to any of subrules (2) to (5) must be served in the manner required by these rules with respect to the document.

(7) A judgment or order requiring a person under disability to do, or refrain from doing any act, a notice of motion or summons for the committal of any person under disability, and a subpoena against any such person, must notwithstanding anything contained in subrules (2) to (5), be served personally on the person, unless the Court otherwise orders.

(8) Subrule (7) does not apply to an order for interrogatories or for discovery or inspection of documents.

[Rule 13 amended: Gazette 15 Jun 1973 p. 2250; 22 Jul 1994 p. 3748; 21 Feb 2007 p. 576; 28 Jun 2011 p. 2552-3 and 2555; SL 2020/242 r. 9(27)-(30).]

Order 71 — Partners, business names

1. Partners may sue or be sued in name of firm

Subject to the provisions of any enactment, partners may sue or be sued in the name of the firm (if any) of which they were partners when the cause of action accrued, and an action by or against a firm in the firm name shall be sufficient to include all partners constituting the firm.

2. Disclosure of partners' names

(1) A defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners of the firm at the time when the cause of action accrued.

(2) If such notice is not complied with, the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that all proceedings in the action be stayed on such terms as the Court may direct.

(3) When the names of the partners have been declared, the proceedings shall continue in the name of the firm, but with the same consequences as would have ensued if the persons whose names had been so declared had been named as plaintiffs in the writ.

(4) Where an action is brought against partners in the name of the firm subrules (1) and (2) shall have effect in relation to that action as they have effect to an action brought by partners in the name of a firm, but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively and with the deletion of the power of the Court to stay proceedings, and the substitution therefor of a

power to the Court to strike out any defence by the firm in its firm name.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2552-3.]

3. Service on firm

(1) Where parties are sued in the name of a firm under rule 1, the writ may, except in the case mentioned in subrule (2), be served —

(a) on any one or more of the partners; or

(b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there,

and subject to these rules such service shall be deemed good service upon the firm so sued whether or not any member of the firm is out of the jurisdiction, and no leave to issue a writ against that member shall be necessary.

(2) Where a partnership has to the knowledge of the plaintiff been dissolved before an action against the firm is begun, the writ must be served on every person within the jurisdiction sought to be made liable in the action.

[Rule 3 amended: Gazette 28 Jun 2011 p. 2552.]

4. Person served under r. 3 to be notified of character in which he is served

Where a writ is issued against a firm, and is served as directed by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner.

5. Appearance of partners

Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

6. No appearance except by partners

When a writ is served under rule 3 upon a person apparently having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

7. Appearance under protest of person served as partner

(1) When a person served as a partner under rule 3 denies that he was a partner or liable as such at any material time, he may enter an appearance which states that he does so as a person served as a partner in the defendant firm, but who denies that he was a partner at any material time.

(2) Where an appearance is so entered it shall not preclude the plaintiff from otherwise serving the firm, and obtaining judgment against the firm in default of appearance, if no party has entered an appearance in the ordinary form.

(3) Where an appearance to which this rule applies is entered —

(a) the plaintiff may either apply to set it aside on the ground that the person entering it was a partner or liable as a partner, or may leave that question to be determined at a later stage of the proceedings; or

(b) the person entering the appearance may apply to set aside the service on him on the ground that he was not a partner or liable as such at a material time, or he may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) Where a defendant has entered an appearance in accordance with subrule (1), the Court may order on the application of the plaintiff or of that defendant, and at any stage of the proceedings, that any question as to the liability of that defendant or as to the liability of the defendant firm, be tried in such manner and at such time as the Court thinks fit.

[Rule 7 amended: Gazette 28 Jun 2011 p. 2552.]

*[**8.** Deleted: Gazette 22 Feb 2008 p. 641.]*

9. Rules 1 to 7 apply also to some actions between firm and its members etc.

Rules 1 to 7 apply also to actions between a firm and one or more of its members and to actions between firms having one or more members in common, if the firm or firms carry on business within the jurisdiction.

[Rule 9 inserted: Gazette 22 Feb 2008 p. 642.]

*[**10.** Deleted: Gazette 22 Feb 2008 p. 642.]*

11. Rules 2 to 9 apply to proceedings begun by originating summons

Rules 2 to 9 apply with the necessary modifications to causes by or against partners in the name of their firm which are begun by originating summons as they apply in relation to actions begun by writ.

[Rule 11 amended: Gazette 22 Feb 2008 p. 642.]

12. Application to person using business name

An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and rules 2 to 11, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

13. Application to charge partner's interest in partnership etc.

(1) Every application to the Court by a judgment creditor of a partner for an order charging his interest in the partnership property and profits under section 28 of the *Partnership Act 1895* [3], and for such other orders as are thereby authorised to be made, and every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application must be made by summons.

(2) A summons issued by a judgment creditor under this rule and an order made on such summons must be served on the judgment debtor and on such of his partners as are within the jurisdiction.

(3) A summons issued by a partner of a judgment debtor under this rule and an order made on such summons must be served —

(a) on the judgment creditor; and

(b) on the judgment debtor; and

(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction.

(4) A summons or order served in accordance with this rule on some only of the partners of the judgment debtor shall be deemed to have been served on all the partners of the partnership.

Order 71A — Contact details of parties and others

[Heading inserted: Gazette 21 Feb 2007 p. 576.]

1. Addresses of places, requirements for

(1) The address of a place stated under this Order must contain enough information to enable an individual to go to the place.

(2) For the purposes of, but without limiting, subrule (1) —

(a) the information must include any floor or level number, and any room, flat, suite or apartment number, necessary to enable an individual to go to the place;

(b) a post box number or road mail box or bag number is not enough information.

[Rule 1 inserted: Gazette 21 Feb 2007 p. 576.]

2. Geographical addresses

For the purposes of these rules the geographical address of a person is —

(a) if the person is an individual —

(i) the address of the place where he or she usually lives; or

(ii) if the person has no such address, the address of the place where he or she usually works;

(b) if the person is a partnership, the address of the place that is the partnership's main place of business;

(c) if the person is a body corporate —

(i) if the body is required by the *Corporations Act 2001* of the Commonwealth to have a registered office — the address of the place where the registered office is situated;

(ii) if the body is incorporated under the *Associations Incorporation Act 2015* — the address of the

place where a member of the body's committee usually lives;

(iii) in any other case — the address of the place that is the body's main place of business;

(d) if the person is the State, a Territory or the Commonwealth — the address of the place in Australia where the legal practitioner representing the person conducts business as a legal practitioner.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 577; amended: Gazette 22 Feb 2008 p. 653; 16 Nov 2016 p. 5200; SL 2022/74 r. 15.]

3A. Court may dispense with requirement to state geographical address

(1) The Court may, on the application of a person or on its own initiative, order that the person's geographical address does not have to be stated in a document that is otherwise required under these rules to state the person's geographical address.

(2) Subject to subrule (3), the Court must not make an order under subrule (1) in relation to a person unless the person —

(a) is an individual; and

(b) has provided an address for service; and

(c) has provided his or her geographical address to the Court on a confidential basis.

(3) In exceptional circumstances, the Court may make an order under subrule (1) even though the person has not provided his or her geographical address to the Court.

(4) The Court may, on the application of any person or on its own initiative, do one or more of the following —

(a) amend or cancel an order made under subrule (1);

(b) order that the person's geographical address be given to another person.

[Rule 3A inserted: Gazette 13 Nov 2015 p. 4649-50.]

3. Service details, meaning of

(1) If these rules require a document to state a person's service details and the person is self-represented, the document —

(a) must state a postal address in Australia that can be used to serve documents on the person; and

(b) may state one fax number that can be used to serve documents on the person; and

(c) may state one email address that can be used to serve documents on the person.

(2) If these rules require a document to state a person's service details and the person is represented by a legal practitioner, the document —

(a) must state the name of the legal practitioner; and

(b) must state the address of the place in Australia where the legal practitioner conducts business as a legal practitioner; and

(c) must state the legal practitioner's postal address in Australia; and

(d) with the legal practitioner's consent, may state any or all of the following —

(i) one fax number;

(ii) one email address;

(iii) the details of a document exchange approved by the Chief Justice,

in Australia that can be used to serve documents on the legal practitioner.

[(e) deleted]

(3) If under this rule a document states a fax number or an email address of a person, the person is to be taken to have consented

to being served with documents by fax at that fax number or by means of email at that email address.

(4) If a legal practitioner practises in a business with one or more other legal practitioners or people —

(a) a fax number stated under subrule (2) must be the fax number of the business and not that of the legal practitioner personally; and

(b) an email address stated under subrule (2) must be the email address of the business and not that of the legal practitioner personally.

(5) If a party who is self-represented is an authorised user of the ECMS, any email address stated under subrule (1) must be the email address of the party recorded on the ECMS.

(6) If a legal practitioner is an authorised user of the ECMS, any email address stated under subrule (2) must be the email address of the legal practitioner recorded on the ECMS.

[Rule 3 inserted: Gazette 21 Feb 2007 p. 577-8; amended: Gazette 22 Feb 2008 p. 654; 27 Feb 2018 p. 618; 31 Dec 2019 p. 4677-8; SL 2022/74 r. 15.]

4. Documents without contact details to be rejected

(1) The Central Office must reject a document submitted for filing or issuing if these rules require the document to state —

(a) a person's geographical address; or

(b) a person's service details,

and it does not do so in accordance with this Order.

(2) A document is not to be rejected on the basis that it does not state a person's geographical address if the Court has ordered, under rule 3A, that it is not required to be stated.

[Rule 4 inserted: Gazette 21 Feb 2007 p. 578; amended: Gazette 13 Nov 2015 p. 4650.]

5. Changes of information to be notified

(1) If a document states information required or permitted by rule 2 or 3, the person who filed the document —

(a) must promptly give notice of any change to the information; and

(b) may, in respect of any of the information that does not have to be stated under those rules, give notice that the information can no longer be used to serve documents; and

(c) may, in respect of any of the information that does not have to be, and has not been, stated under those rules, give notice of the information.

(2) Notice under subrule (1) —

(aa) must be in Form 5AA; and

(a) must be given by filing a notice and serving it on any person who has been given the information; and

(b) may be given as part of a notice given under Order 8.

[Rule 5 inserted: Gazette 21 Feb 2007 p. 579; amended: Gazette 13 Nov 2015 p. 4650; 27 Feb 2018 p. 618.]

6. Fictitious details in documents, court powers as to

If on the application of a party the Court is satisfied that any information stated in a document in purported compliance with this Order is fictitious, it may set aside the filing of the document or order the document to be rectified and may make any necessary consequential order.

[Rule 6 inserted: Gazette 21 Feb 2007 p. 579.]

Order 72 — Service of documents

1. When personal service required

(1) Any document which by virtue of these rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these rules or by order of the Court is required to be so served.

(2) Subrule (1) shall not affect the power of the Court under any provision of these rules to dispense with the requirement for personal service.

[Rule 1 amended: Gazette 28 Jun 2011 p. 2552.]

2. Personal service on individual

Personal service of a document is effected by leaving a copy of the document with the person to be served, and if so requested by him at the time when it is left, showing him —

(a) in the case where the document is a writ or other originating process, the original; and

(b) in any other case the original or a true copy.

[Rule 2 amended: Gazette 27 Feb 2018 p. 618.]

3. Personal service on body corporate

Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any Act, be effected by serving it in accordance with rule 2 on the mayor, president or other head officer of the body, or on the chief executive officer, clerk, treasurer, manager, secretary or other similar officer thereof.

[Rule 3 amended: Gazette 22 Feb 2008 p. 654.]

3A. Personal service on State

Personal service of a document on the State may be effected by serving it in accordance with rule 2 on the person in charge of administrative matters at the office of —

(a) the Attorney General; or

(b) if there is no Attorney General appointed, the Minister for Justice; or

(c) if there is neither an Attorney General nor a Minister for Justice appointed, the Minister of the State designated under the *Supreme Court Act 1935* section 154(3) or (4).

[Rule 3A inserted: Gazette 21 Feb 2007 p. 579; amended: Gazette 22 Feb 2008 p. 654.]

4. Substituted service

(1) Where by these rules personal service of a document is required and it appears to the Court that personal service of such document on a person required to be served is impracticable, the Court may order that the document be served on that person by substituted service.

(2) An application for an order for substituted service shall be supported by an affidavit stating the facts on which the application is founded.

(3) Substituted service pursuant to an order under this rule is effected by taking such steps as the Court directs to bring the document to the notice of the person to be served, and has the same operation as personal service.

[Rule 4 amended: Gazette 14 May 1976 p. 1431; 12 Nov 1976 p. 4277.]

5. Ordinary service, how effected

(1) This rule does not apply to a document that, under these rules, has to be served personally.

(2) This rule —

(a) does not prohibit personal service of a document to which it applies; and

(b) does not affect any written law that provides for how a document may be served on a body corporate.

(3) If under these rules a person has filed a document that, in accordance with Order 71A, states the person's service details, a document may be served on the person by addressing it in accordance with subrule (4) and —

(a) delivering it, or posting it by pre-paid post, to the postal address stated in the service details; or

(b) if some other method of serving the person is stated in the service details, using that method to serve it on the person.

(4) A document to be served on a person under subrule (3) must —

(a) if the person is self-represented, be addressed to the person;

(b) if the person is represented by a legal practitioner, be addressed to the legal practitioner;

(c) if the document is being served by fax, be sent with a cover page that states —

(i) the person to whom the fax is addressed; and

(ii) the sender's name and postal address; and

(iii) those of the sender's document exchange number, telephone number and fax number that can be used to contact the sender; and

(iv) the number of pages (including the cover page) being sent.

(5) If under these rules a person has not filed a document that, in accordance with Order 71A, states the person's service details, a document may be served on the person —

(a) by delivering it, or posting it by pre-paid post, to the person's geographical address or last known geographical address; or

(b) if the person is represented by a legal practitioner in connection with the proceedings to which the document relates — by delivering it to the place, or posting it by pre-paid post to the address of the place, where the legal practitioner conducts business as a legal practitioner; or

(c) by the means that the Court directs in a particular case.

[Rule 5 inserted: Gazette 21 Feb 2007 p. 580-1; amended: SL 2022/74 r. 15.]

5A. Ordinary service, when effected

[(1) deleted]

(2) A document that is sent to a person by a method in the Table to this rule is to be taken to be served on the person at the time stated opposite the method in the Table, unless the contrary is proved.

Table

No.	Method of serving a document	When the document is to be taken to be served
1.	Delivering it to a place.	If it is delivered before 4.00 p.m. on a working day, on that day. Otherwise on the first working day after it is delivered.
2.	Posting it by pre-paid post to an address.	When it would be delivered to the address in the ordinary course of post.

No.	Method of serving a document	When the document is to be taken to be served
3.	Sending it by fax.	If it is sent by fax before 4.00 p.m. on a working day, on that day. Otherwise, on the first working day after the fax is sent.
4.	Sending it by email.	If it is sent by email before 4.00 p.m. on a working day, on that day. Otherwise, on the first working day after the email is sent.
5.	Delivering it to a document exchange.	On the first working day after it is delivered.

(3) If a document is served on a person in accordance with the Court's directions given in a particular case, the document is to be taken to be served on the person at the time directed by the Court.

[Rule 5A inserted: Gazette 21 Feb 2007 p. 581; amended: Gazette 22 Feb 2008 p. 654; 28 Jul 2010 p. 3468.]

6. Service of documents by Court

(1) If service of a document on a person by the Court is required, the proper officer must —

(a) serve it on the person under rule 5; or

(b) if the person is an authorised user of the ECMS —

(i) put it in an electronic mailbox maintained by the Court; and

(ii) send to the person's email address recorded on the ECMS an email that says the document is in the mailbox,

or serve it on the person under rule 5; or

(c) if the Court has directed how the document is to be served — obey the directions.

(2) Rule 5A applies to a document served under subrule (1).

[Rule 6 inserted: Gazette 22 Feb 2008 p. 655; amended: Gazette 27 Feb 2018 p. 618-19; 31 Dec 2019 p. 4677-8.]

6A. Serving documents by email

Order 67A rule 4(4) to (7), with any necessary changes, apply to a document being served by email in the same way as they apply to a document being filed by email.

[Rule 6A inserted: Gazette 22 Feb 2008 p. 655; amended: Gazette 27 Feb 2018 p. 619.]

7. Affidavits of service, content of

An affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

8. No service required in certain cases

Where by virtue of these rules any document is required to be served on any person but is not required to be served personally, and at the time at which service is to be effected that person is in default as to entry of appearance or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these rules otherwise provides.

Order 73 — Probate proceedings

1. Application of this Order and terms used

(1) This Order applies to probate causes and matters, and the rules of court generally apply to those causes and matters subject to the provisions of this Order.

(2) In these rules ***probate action*** means an action for the grant of probate of the will, or letters of administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order —

Registry means the Probate Office of the Supreme Court;

testamentary script means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;

will has the same meaning as in the *Administration Act 1903*.

2. Commencing probate action

(1) A probate action must be begun by writ.

(2) A writ beginning an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person shall not be issued unless a citation under rule 8 has been issued or the probate or letters of administration, as the case may be, has or have been filed.

[Rule 2 amended: Gazette 27 Feb 2018 p. 619.]

*[**3.** Deleted: Gazette 12 Jun 2012 p. 2452.]*

4. Intervention by person who is not defendant

(1) A person who is not named as a defendant in the writ in a probate action may apply to the Court for leave to intervene in the action.

(2) An application under this rule must be made by summons supported by an affidavit showing the interest of the applicant in the estate of the deceased.

(3) An applicant who obtains leave to intervene in a probate action is not entitled to be heard in the action unless he enters an appearance therein.

(4) Where the Court grants leave to intervene, it may give such directions as to the filing and service of pleadings, the filing of an affidavit of testamentary scripts, or other matters as it thinks necessary.

5. Citation against non-party with adverse interest

On the application of the plaintiff, or of any other party who has pleaded in a probate action, a citation may be issued against any person not a party to the action who has an interest adverse to the applicant notifying him that if he does not enter an appearance in the action judgment may be given therein without further notice to him.

6. Person cited failing to appear

Where a person on whom a citation under rule 5 is served fails to enter an appearance in the action, the party on whose application the citation was issued shall not be entitled to be heard at the trial of the action without the leave of the Court unless he has filed an affidavit proving due service of the citation on that person.

7. Entry of appearance

An entry of appearance in a probate action must be filed and Order 12 rules 1 to 7 apply to an entry of appearance by a person authorised to intervene in such an action, and by a person cited under rule 5, as if —

(a) that person were a defendant; and

(b) the parties to an action (in the case of an intervener) or the party at whose instance the citation was issued (in the case of a person cited) were the plaintiff.

[Rule 7 amended: Gazette 27 Feb 2018 p. 619-20.]

8. Citation to executor etc. to bring in probate etc.

In an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person, a citation may, on the application of the plaintiff, be issued against the person to whom the grant of probate or letters of administration was made requiring him to bring into and leave at the Central Office the probate or letters of administration, as the case may be.

8A. Applications to include draft citation

An application under rule 5 or 8 must include a draft citation.

[Rule 8A inserted: Gazette 27 Feb 2018 p. 620.]

9. Citations, issue of

(1) A citation must not be issued unless —

(a) the citation is settled by a registrar; and

(b) the applicant, or in special circumstances by leave of a registrar the applicant's solicitor, has sworn an affidavit verifying the statements of fact to be made in the citation.

(2) A citation is issued upon its being sealed by the proper officer.

[Rule 9 amended: Gazette 14 Dec 1979 p. 3872; 27 Feb 2018 p. 620.]

10. ~~Citations, service~~Service of citations

(1) Without prejudice to Order 72 rule 4, a citation must be served personally on the person cited.

(2) A citation may be served out of the jurisdiction but, if it is issued pursuant to rule 8, only with the leave of the Court.

(3) Order 10 rule ~~4~~6 applies to an application for leave under subrule (2) as it applies to an application for leave under ~~rules 1 or 2 of that~~ Order 10 Division 3.

(4) The order granting leave must fix the time within which the person to be served must comply with the citation.

(5) Order 10 ~~rules 9, 10 and 11 apply~~Division 4 applies to a citation issued ~~pursuant to~~under rule 8 as ~~they apply to a writ~~it applies to an originating process.

[Rule 10 amended: Gazette 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2452; SL 2024/38 r. 16.]

11. Affidavit of scripts

(1) Subject to any direction by the Court the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit —

(a) describing any testamentary script of the deceased person whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he does not know of any such script; and

(b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under

whose control it is or, if such be the case, stating that he does not know the name or address of that person,

and shall, in accordance with Order 37 rule 2, attach to the affidavit any such script which is in his possession or control.

(2) An affidavit required by this rule and any testamentary script attached to it must be filed within 14 days after the entry of appearance by a defendant, or if no defendant enters an appearance and the Court does not otherwise direct, before the action is set down for trial.

[Rule 11 amended: Gazette 21 Feb 2007 p. 582.]

12. Scripts in pencil, affidavits as to; inspecting affidavits of scripts

(1) Where a testamentary script required by rule 11 to be filed or any part of it is written in pencil, the person filing it shall also, except where the Court otherwise directs, attach to the affidavit a typed copy of the script or the page or pages of it containing the part written in pencil showing in bold type the words which appear in pencil in the original.

[Heading deleted: Gazette 22 Feb 2008 p. 642.]

(2) A party to a probate action shall not, except by leave of the Court, be allowed to inspect an affidavit filed pursuant to rule 11 by any other party to the action or any testamentary script exhibited thereto, unless and until he has complied with the requirements of rule 11 so far as they apply to him.

[Rule 12 amended: Gazette 21 Feb 2007 p. 582; 27 Feb 2018 p. 620.]

13. Default of appearance

(1) Order 13 does not apply to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, and the plaintiff has filed an affidavit

proving due service of the writ on that defendant, the plaintiff may, after the time limited for appearing by the defendant, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant or none of the defendants in a probate action and none of the persons (if any) cited under rule 5, enters an appearance, and the Court has not, on the application of the plaintiff, ordered discontinuance of the action, the plaintiff may, after the time limited for appearance, apply to the Court for leave to set down the action for trial.

(4) Before applying for leave under subrule (3), the plaintiff must file an affidavit proving due service of the writ and of the citation (if any).

(5) The Court granting leave under subrule (3) may order the plaintiff to file an affidavit of testamentary scripts.

[Rule 13 amended: Gazette 28 Jun 2011 p. 2552; 12 Jun 2012 p. 2452.]

14. Counterclaim

Where a defendant alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate of the deceased person which is the subject of the action he must, notwithstanding anything in Order 18 rule 2(1), add to his defence a counterclaim in respect of that matter.

15. Defendant may require only proof in solemn form

In a probate action a party opposing a will may, with his defence, give notice to the party propounding the will that he merely insists on the will being proved in solemn form, and only intends to cross-examine the witnesses produced to support the will and he may thereupon do so and, if he does not participate further in the action, he shall not be liable to pay the costs of

that other party unless the Court considers that there was no reasonable ground for opposing the will.

16. Pleadings

(1) Where a plaintiff disputes the interest of a defendant he shall so allege in his claim.

(2) Where by virtue of an interest a party claims to be entitled to a grant of letters of administration another party shall not dispute that interest unless he shows in his pleading that if the allegations in it are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Order 20 rule 8 a party shall not plead that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents unless he specifies the nature of the case on which he intends to rely and shall not make any allegation in support of such a plea which would be relevant to any other plea that —

(a) the will was not duly executed; or

(b) at the time of the execution of the will the testator was not of sound mind, memory and understanding; or

(c) the execution of the will was obtained by undue influence or fraud,

unless he also makes that other plea.

17. Default of pleadings

[(1) deleted]

(2) Where a party to a probate action fails to serve on another party a pleading which he is required by these rules to so serve, and the Court has not ordered discontinuance of the action, the other party may, after the expiration of the time fixed by or pursuant

to these rules for service of that pleading, apply to the Court for leave to set down the action for trial.

[Rule 17 amended: Gazette 16 Nov 2016 p. 5200.]

18. Discontinuance

(1) Order 23 does not apply to a probate action.

(2) Where at any stage of the proceedings in a probate action the plaintiff or any party who has entered an appearance therein applies by summons for an order for discontinuance of the action, the Court may so order on such terms as to costs and otherwise as it thinks just and may further order that a grant of probate of the will or letters of administration of the estate of the deceased person, which is the subject of the action be made to the person entitled thereto.

19. Compromise

Where at any stage of the proceedings in a probate action the parties agree to a compromise, the action may, with the leave of the Court, be set down for trial.

20. Orders etc. to bring in will etc.

(1) An application for an order requiring a person to bring into the Registry, or otherwise as the Court may direct, a will or other testamentary paper or to attend in court for examination may be made to a judge by summons which must be served on the person against whom the order is sought.

(2) An application for the issue of a subpoena requiring a person to bring into the Registry, or otherwise as in the said subpoena may be directed, a will or other testamentary paper must be supported by an affidavit showing that such will or testamentary paper is in the possession, within the power, or under the control of such person.

(3) Where the person against whom a subpoena referred to in subrule (2) is issued denies that the will or other testamentary paper referred to in the subpoena is in his possession, within his power, or under his control, he may file an affidavit to that effect.

[Rule 20 amended: Gazette 30 Nov 1984 p. 3952; 28 Jun 2011 p. 2552; 24 May 2017 p. 2577; 27 Feb 2018 p. 620.]

21. Applications, making

(1) Except where these rules otherwise provide and subject to subrule (2) applications to the Court in a probate cause or matter may be made by summons.

(2) The Court may direct that an application in a probate cause or matter be made to the Court by motion.

(3) Where an application is to be made to the Court by motion, the applicant must not less than 7 clear days before the day fixed for the hearing of the motion file a case for motion together with an affidavit verifying the statement of facts made in the case, and serve a copy of the case and of every affidavit in support of the motion on any person entitled to be heard in opposition to the motion.

(4) A case for motion must set out any prior proceedings in the cause or matter with the dates thereof and the relevant facts in summary form, and must state the relief or remedy sought.

[Rule 21 amended: Gazette 28 Jun 2011 p. 2552.]

22. Administrator or receiver appointed pending litigation

(1) An application under section 35 of the *Administration Act 1903* for the appointment of an administrator and receiver may be made to a master by summons.

(2) Subject to any order of the Court, an administrator and receiver appointed under section 35 of the said Act must file and pass

accounts at such intervals or at such times as the Court may direct, and the provisions of Order 51 rule 5 apply with such modifications as may be necessary, to such administrator and receiver and to his accounts.

(3) Except where the remuneration of the administrator or receiver has been fixed by a judge, the master may, on the passing of the accounts of the administrator and receiver, assess and provide for his remuneration in accordance with section 35 of the said Act.

[Rule 22 amended: Gazette 30 Nov 1984 p. 3952.]

[Order 74 deleted: Gazette 30 Oct 1992 p. 5310.]

Order 75 — *Family Provision Act 1972* rules [4]

[Heading inserted: Gazette 22 Feb 2008 p. 642.]

1. Terms used

In this Order unless the contrary intention appears —

Act means the *Family Provision Act 1972* [4]; and

grant means a grant of probate or administration, or an order to administer made under section 10 or section 12 of the *Public Trustee Act 1941*; and

Registry means the Probate Office of the Supreme Court; and

words defined in section 4 of the Act and used in this Order have the same respective meanings as in the Act.

[Rule 1 inserted: Gazette 15 Jun 1973 p. 2250.]

2. Applications under Act, making of

(1) An application for an order under the Act (other than an application in pending proceedings) shall be commenced by originating summons.

(2) The applicant shall be the plaintiff and, subject to any order made under section 12(1) of the Act, the Administrator shall be the defendant.

(3) All proceedings to which this Order relates shall be intituled in the matter of the *Family Provision Act 1972* [4], and in the matter of the will or estate of the deceased person to which the proceedings relate.

[Rule 2 inserted: Gazette 15 Jun 1973 p. 2250.]

3. Copy of summons to be placed on probate file or linked to electronic file

(1) Upon the issue of an originating summons under this Order, the person presenting the summons for sealing must deliver to the

Principal Registrar or file electronically a copy of the will of the testator as admitted to probate or annexed to letters of administration of the testator's estate.

(2) The Principal Registrar must —

(a) cause a copy of the summons to be placed on the probate file in the Registry; or

(b) link an electronic copy of the summons to the Court's electronic file for the probate matter.

(3) The Principal Registrar, in writing, may delegate the Principal Registrar's functions under subrule (2) to 1 or more officers of the Court.

[Rule 3 inserted: SL 2020/242 r. 10(1).]

*[**4.** Deleted: Gazette 21 Feb 2007 p. 582.]*

5. Court may make inquiries etc.

At a case management conference held under Order 4A rule 18 or upon later application the Court may —

(a) inquire as to —

(i) the nature of the relief that the plaintiff seeks; and

(ii) the persons or classes of persons who will be affected by that relief if granted;

(b) for the purpose of the inquiry, direct the plaintiff and defendant to supply such information as the Court may require;

(c) give directions as to the persons to be added as defendants as being interested in the relief claimed, or to represent classes of persons so interested;

(d) make an order under rule 7;

(e) direct that notice of the application be served on any person;

(f) give such other directions as the Court thinks fit as to the evidence to be filed, the persons to be served and the hearing of the application.

[Rule 5 inserted: Gazette 15 Jun 1973 p. 2250-1; amended: Gazette 21 Feb 2007 p. 582; 28 Jul 2010 p. 3468; 16 Aug 2017 p. 4420.]

6. Parties may be added

At any stage of the proceedings the Court may direct that any person be made a party or that notice of the application be served on any person.

[Rule 6 inserted: Gazette 15 Jun 1973 p. 2251.]

7. Representative defendant

Where a person has been added as a defendant and other persons have the same or a similar interest as that defendant, the Court may order that that defendant be authorised to defend the proceedings on behalf of or for the benefit of all persons so interested, and that all persons so interested shall be bound by any order made in the proceedings.

[Rule 7 inserted: Gazette 15 Jun 1973 p. 2251.]

8. Probate etc. to be lodged at Registry if judgment for plaintiff

(1) Where an order under the Act is made in favour of a plaintiff, the Administrator shall forthwith after the order has been entered lodge at the Registry the grant with a copy of the order indorsed thereon, and 2 photographic copies of the order.

(2) When the indorsement on the grant has been certified in accordance with section 14(4) of the Act, the grant shall be returned to the Administrator.

(3) This rule does not apply to an order made upon the hearing of an originating summons of the kind referred to in rule 9.

[Rule 8 inserted: Gazette 15 Jun 1973 p. 2251.]

9. Appearance to originating summons for extension of time not required

An appearance is not required to an originating summons in which the only relief sought is an extension of time for making an application for an order under the Act.

[Rule 9 inserted: Gazette 15 Jun 1973 p. 2251.]

*[**10.** Deleted: SL 2020/242 r. 10(2).]*

Order 75A — Admission rules

[Heading inserted: SL 2022/74 r. 12.]

1. Terms used

In this Order —

applicant means a person who makes an application under rule 2(1);

Board means the Legal Practice Board established under the *Legal Profession Uniform Law Application Act 2022* section 30(1);

Supreme Court (full bench) means the Court constituted by at least 3 judges.

[Rule 1 inserted: SL 2022/74 r. 13(1).]

2. Application for admission

(1) An application for admission to the Australian legal profession under the *Legal Profession Uniform Law (WA)* section 16 must be made to the Supreme Court (full bench) by motion.

(2) The application must be filed at least 2 months before the proposed date of admission.

(2A) The application cannot be filed electronically.

(3) The applicant must serve a notice of motion on the Board when they apply to the Board for a compliance certificate under the *Legal Profession Uniform Law (WA)* section 19(1).

[Rule 2 inserted: Gazette 6 Feb 2009 p. 244; amended: Gazette 16 Aug 2017 p. 4420; 27 Feb 2018 p. 620-1; SL 2022/74 r. 13(2) and (3).]

2A. Compliance certificates

(1) If the Board issues a compliance certificate in respect of an applicant under the *Legal Profession Uniform Law (WA)*

section 19(3), the Board must file the compliance certificate in the Court at least 7 days before the applicant's proposed date of admission.

(2) The Board must serve on the applicant a copy of the compliance certificate filed under subrule (1).

[Rule 2A inserted: SL 2022/74 r. 13(4).]

2B. Appeals under *Legal Profession Uniform Law (WA)* section 26 or 27

Order 65 (other than rule 10(6)) applies to an appeal under the *Legal Profession Uniform Law (WA)* section 26 or 27.

[Rule 2B inserted: SL 2022/74 r. 13(4).]

2C. Objection to admission

(1) A person (the ***objector***) may object to the admission of an applicant to the Australian legal profession under the *Legal Profession Uniform Law (WA)* section 16(3) by filing a notice in the Court.

(2) A notice filed under subrule (1) must —

(a) state the grounds of the objection; and

(b) be filed at least 7 days before the applicant's proposed date of admission; and

(c) be served on the applicant, unless the Court orders otherwise.

(3) The Court may, at any time after a notice under subrule (1) is filed, do one or more of the following —

(a) dismiss or strike out the objection if the Court believes that it is frivolous, vexatious, misconceived or lacking in substance, is being used for an improper purpose or is otherwise an abuse of process;

(b) order the objector or the applicant, or both, to file written submissions;

(c) determine the objection in chambers on the documents;

(d) list the objection for hearing.

(4) If a hearing is held to determine the objection, both the objector and the applicant are entitled to appear and be heard.

[Rule 2C inserted: SL 2022/74 r. 13(4).]

3. Attendance at hearing of application for admission

(1) Subject to subrule (2) a person who applies for admission must attend in person before the Supreme Court (full bench) when the application is heard.

(2) A person who applies for admission under the *Mutual Recognition Act 1992* (Commonwealth) or the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth) is not required to attend in person.

(3) A person who is admitted without appearing in person must, within 21 days of being admitted —

(a) attend at —

(i) if the application for admission was made under the *Mutual Recognition Act 1992* (Commonwealth) — the office of a superior court of a State or Territory or of the High Court; or

(ii) if the application for admission was made under the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth) — the office of a superior court of a State or Territory or the High Court of Australia or of the Supreme Court or High Court of New Zealand;

and

(b) before the Principal Registrar, a registrar, a deputy registrar or the prothonotary of that court, take an oath or affirmation in the form set out in rule 4.

(4) When a person takes an oath or affirmation in accordance with subrule (3), the person's name is to be entered in the Supreme Court roll maintained under the *Legal Profession Uniform Law (WA)* section 22(1) in the usual manner.

[Rule 3 inserted: Gazette 6 Feb 2009 p. 244-5; amended: SL 2022/74 r. 13(5)-(7); SL 2023/16 r. 9.]

4. Oath or affirmation

The form of the oath or affirmation required under the *Legal Profession Uniform Law (WA)* section 16(1)(c) is —

I, *[name]*, *[insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005]* that I will truly and honestly conduct myself in my practice as a lawyer and as an officer of this honourable court according to the best of my knowledge and ability.

[Rule 4 inserted: Gazette 6 Feb 2009 p. 245; amended: Gazette 3 May 2013 p. 1719; SL 2022/74 r. 13(8).]

Order 76 — *Public Notaries Act 1979* rules

[Heading inserted: Gazette 21 Feb 2007 p. 582.]

1. Terms used

In this Order, unless the contrary intention appears —

Act means the *Public Notaries Act 1979*; and words defined in section 3 of the Act and used in this Order have the same respective meanings as in the Act.

[Rule 1 inserted: Gazette 18 Jul 1980 p. 2384.]

1A. Districts prescribed for Act

For the purpose of the Act each district named in column 1 of the Table to this rule, comprising the local government districts (with boundaries as declared from time to time) listed opposite the name in column 2, is prescribed.

Table

Name of district	Local government districts that comprise the district	
Gascoyne District	Carnarvon Exmouth	Shark Bay Upper Gascoyne
Goldfields-Esperance District	Coolgardie Dundas Esperance Kalgoorlie-Boulder Laverton	Leonora Menzies Ngaanyatjarraku Ravensthorpe Wiluna
Great Southern District	Albany (Town) Albany (Shire) Broomehill Cranbrook Denmark Gnowangerup Jerramungup	Katanning Kent Kojonup Plantagenet Tambellup Woodanilling

Name of district	Local government districts that comprise the district	
Kimberley District	Broome	
	Derby-West Kimberley	
	Halls Creek	
	Wyndham-East Kimberley	
Mid West District	Carnamah	Morawa
	Chapman Valley	Mt. Magnet
	Coorow	Mullewa
	Cue	Murchison
	Geraldton	Northampton
	Greenough	Perenjori
	Irwin	Sandstone
	Meekatharra	Three Springs
	Mingenew	Yalgoo
Peel District	Boddington	Serpentine-Jarrahdale
	Mandurah	Waroona
	Murray	
Pilbara District	Ashburton	Port Hedland
	East Pilbara	Roebourne
South West District	Augusta-Margaret River	
	Bridgetown-Greenbushes	
	Donnybrook-Balingup	
	Boyup Brook	Dardanup
	Bunbury	Harvey
	Busselton	Manjimup
	Capel	Nannup
	Collie	

Name of district	Local government districts that comprise the district	
Wheatbelt District	Beverley	Narembeen
	Brookton	Narrogin (Town)
	Bruce Rock	Narrogin (Shire)
	Chittering	Northam (Town)
	Corrigin	Northam (Shire)
	Cuballing	Nungarin
	Cunderdin	Pingelly
	Dandaragan	Quairading
	Dalwallinu	Tammin
	Dowerin	Toodyay
	Dumbleyung	Trayning
	Gingin	Victoria Plains
	Goomalling	Wagin
	Kellerberrin	Wandering
	Kondinin	West Arthur
	Koorda	Westonia
	Kulin	Wickepin
	Lake Grace	Williams
	Merredin	Wongan-Ballidu
	Moora	Wyalkatchem
	Mt. Marshall	Yilgarn
	Mukinbudin	York

[Rule 1A inserted: Gazette 21 Feb 2007 p. 583-4; amended: SL 2020/228 r. 4.]

2. Application for certificate of fitness (Act s. 8)

(1) An application to the Chief Justice for a certificate under section 8 of the Act shall be made on affidavit —

(a) exhibiting a certificate from the registrar that the applicant is on the Supreme Court roll maintained under the *Legal Profession Uniform Law (WA)* section 22(1) and is not a disqualified person as defined in section 6(1) of that Law; and

(b) exhibiting a certificate from the Chairman of the Legal Practice Board that the applicant is not, pursuant to an order of the Board, under suspension from practice; and

(c) exhibiting certificates from 2 legal practitioners of the Court of at least 10 years' standing and practice that the applicant is of good character and reputation and is competent to act as a Public Notary; and

(d) setting out details of any professional experience as a legal practitioner that is relevant to the application; and

(e) containing the other information required by section 7 of the Act.

(2) A certificate granted under section 8 of the Act shall be in accordance with Form No. 93A.

[Rule 2 inserted: Gazette 18 Jul 1980 p. 2384; amended: Gazette 19 Apr 2005 p. 1300; 29 Apr 2005 p. 1794; 3 Jul 2009 p. 2699; SL 2022/74 r. 14 and 15.]

3. Notice of intention to apply to be appointed Public Notary (Act s. 9)

(1) An applicant shall on 2 occasions advertise in a morning daily newspaper published in Perth notice of his intention to apply to the Supreme Court (full bench) for appointment as a Public Notary.

(1A) The first advertisement shall be published not less than 4 weeks before the return day of the application; and the second advertisement shall be published not less than one week nor more than 2 weeks after the first advertisement.

(2) Where the applicant is applying to be appointed as a District Public Notary and there is a newspaper published in the district to which the application relates, the applicant shall also advertise the notice in such a newspaper not less than 2 weeks before the return day of his application to the Supreme Court (full bench).

(3) The notice referred to in subrules (1) and (2) shall be in accordance with Form No. 93B.

[Rule 3 inserted: Gazette 18 Jul 1980 p. 2384-5; amended: Gazette 30 Nov 1984 p. 3954; 29 Apr 2005 p. 1794; 28 Jun 2011 p. 2552-3.]

4. Application to be appointed Public Notary

(1) An application to the Supreme Court (full bench) for appointment as a Public Notary shall be by motion supported by an affidavit of the applicant exhibiting the certificate of the Chief Justice under section 8 of the Act.

(2) The applicant shall serve the application and affidavit on the Attorney General not less than 10 days before the application is heard.

(3) Not less than 2 days before the application is heard, the applicant shall file an affidavit —

(a) stating whether any notice of objection has been given under section 11 of the Act, and if so, exhibiting a copy thereof; and

(b) exhibiting extracts from the newspapers containing the advertisements required by rule 3; and

(c) proving compliance with subrule (2).

(4) The applicant shall be present in Court when the application is heard.

[Rule 4 inserted: Gazette 18 Jul 1980 p. 2385; amended: Gazette 29 Apr 2005 p. 1794; 28 Jun 2011 p. 2552.]

5. Certificates of appointment, form of

(1) A person who is appointed a Public Notary shall, upon his name being entered on the Roll of Notaries and payment of the prescribed fee, be entitled to receive from the registrar a

certificate in accordance with Form No. 93C with such variations as the circumstances may require.

(2) The certificate referred to in section 14(3) of the Act shall be in accordance with Form No. 93D with such variations as the circumstances may require.

[Rule 5 inserted: Gazette 18 Jul 1980 p. 2385.]

6. Applications to suspend or strike off Public Notaries

(1) An application to the Supreme Court (full bench) under section 16 of the Act to suspend a Public Notary from practice or to strike a Public Notary off the Roll shall be by motion supported by an affidavit setting out the facts relied on.

(2) Notice of the motion and copy of the affidavit shall be served on the Public Notary not less than 7 days before the application is heard.

[Rule 6 inserted: Gazette 18 Jul 1980 p. 2385; amended: Gazette 29 Apr 2005 p. 1794.]

7. Fees payable on application for appointment

The following fees are payable on appointment as a Public Notary —

On appointment as a General Public Notary	$150.00
On appointment as a District Public Notary	$75.00

[Rule 7 inserted: Gazette 18 Apr 1980 p. 2385; amended: Gazette 30 Nov 1984 p. 3954.]

*[**8.** Deleted: Gazette 16 Jul 1999 p. 3201.]*

[Order 77 deleted: Gazette 29 Apr 2005 p. 1794.]

[Order 78 deleted: Gazette 21 Feb 2007 p. 584.]

[Order 79 deleted: Gazette 29 Apr 2005 p. 1801.]

Order 80 — *Escheat (Procedure) Act 1940* rules

[Heading inserted: Gazette 22 Feb 2008 p. 643.]

1. Term used: said Act

In this Order the *Escheat (Procedure) Act 1940*, is referred to as the ***said Act***.

2. Applications for Order of Escheat, making

(1) Subject to subrule (2), an application for an Order of Escheat shall be commenced by originating motion.

(2) Where a person has claimed title to property the subject of the application, application for an Order of Escheat shall be commenced by originating summons which shall be served upon every such person.

(3) An application for an Order of Escheat, however commenced, shall be intituled "In the matter of..... deceased, *Ex parte* the State of Western Australia" and shall be supported by an affidavit of the facts relied on.

[Rule 2 inserted: Gazette 15 Jun 1973 p. 2252; amended: Gazette 19 Apr 2005 p. 1300; 28 Jun 2011 p. 2552.]

3. Notice of applications, form of

The notice referred to in section 5 of the said Act shall be in Form No. 99.

4. Evidence; judge may direct inquiry

(1) Upon the hearing of an application for an Order of Escheat, such evidence shall be adduced as the judge may require.

(2) The judge may direct an inquiry to be held into all such matters as he may consider necessary, and may prescribe the steps to be taken for that purpose.

5. Claimants to file affidavit verifying claim and may be heard

Any person claiming title to or any lawful interest in or right to the property or premises the subject of the application must file an affidavit verifying his claim, and may attend on the return day of the summons and be heard either personally or by his solicitor or counsel.

6. Judge may order issue to be tried

If it appears to the judge on reading the affidavit verifying the claim, that prima facie the claimant has an interest in the property concerned, he may order that an issue be tried in court, but otherwise the judge may make an Order of Escheat, or such other order as the justice of the case may require.

7. Order of Escheat, form of

An Order of Escheat shall be in Form No. 100, and shall be sealed and marked with the name of the judge by whom it is made.

8. Costs

On the hearing of an application the judge may make an order for payment of costs out of the property concerned, but no costs shall be allowed to any person making an unsuccessful claim to the property unless the judge certifies that there were substantial grounds for making the claim.

Order 80A — *Royal Commission (Custody of Records) Act 1992* rules

[Heading inserted: Gazette 22 Feb 2008 p. 643.]

1. Terms used

In this Order unless the contrary intention appears —

Act means the *Royal Commission (Custody of Records) Act 1992*,

and words defined in section 4 of the Act and used in this Order have the same respective meanings as in the Act.

[Rule 1 inserted: Gazette 26 Jan 1993 p. 828.]

2. Applications for leave to have access (Act s. 14)

(1) An application for leave under section 14 of the Act to have access to a record or records shall be made to the Principal Registrar or a registrar.

(2) The Principal Registrar or a registrar may exercise the powers of the Court when dealing with applications under section 14 of the Act.

[(3) deleted]

(4) An application for leave under section 14 of the Act shall be made to the Court by filing a notice of motion setting out clearly and concisely the grounds upon which the application is made and specifying precisely the record to which access is required, including the type of access required.

(5) An application must be supported by an affidavit setting forth the facts and circumstances upon which the application is based.

(6) An application under subrule (4) may be made *ex parte* and may be dealt with in chambers without the necessity of attendance by the applicant unless the Court otherwise directs.

(7) If the Court otherwise directs, the application shall be heard in chambers either *ex parte* or interparties after service of the motion and the affidavit in support on any person or persons who the Court considers have an interest in the record and the preservation of its confidentiality.

(8) Leave shall not be granted unless the Court is satisfied that all the requirements under section 14(5) of the Act have been met.

[Rule 2 inserted: Gazette 26 Jan 1993 p. 829; amended: Gazette 28 Jun 2011 p. 2552; 27 Feb 2018 p. 621.]

3. Order granting leave, form of

(1) The Court may grant leave on such conditions as it thinks fit.

(2) Orders made under this Order may be made in respect of the whole or a part of the record.

[Rule 3 inserted: Gazette 26 Jan 1993 p. 829.]

[Order 81 deleted: Gazette 29 Apr 2005 p. 1801.]

[Order 81A deleted: Gazette 21 Feb 2007 p. 584.]

Order 81B — *Service and Execution of Process Act 1992* (Commonwealth) rules

[Heading inserted: Gazette 22 Feb 2008 p. 644.]

1. Terms used; how applications to be made

(1) In this Order —

Act means the *Service and Execution of Process Act 1992* of the Commonwealth;

court of rendition, ***enforcement*** and ***place of rendition*** have the same respective meanings as in section 104 of the Act.

(2) All applications under the Act must be made pursuant to these rules.

[Rule 1 inserted: Gazette 1 Mar 1994 p. 788.]

2. Enforcing judgments under Act s. 105, procedure for

(1) A party seeking to enforce a judgment under section 105 of the Act must file a sealed copy of the judgment, or a fax of such a sealed copy, supported by an affidavit.

(2) The affidavit must state that, at the time when the proceeding to enforce is or is to be taken, the judgment is capable of being enforced in or by —

(a) the court of rendition; or

(b) a court in the place of rendition,

and the extent to which it is capable of being enforced in that jurisdiction.

[Rule 2 inserted: Gazette 1 Mar 1994 p. 788.]

3. Claiming interest under Act s. 108, procedure for

A party seeking to claim interest under section 108 of the Act must file an affidavit verifying to the satisfaction of the Court —

(a) the rate or rates payable in respect of the same period or periods as are applicable in the court of rendition; and

(b) the total amount of interest to be recovered based on those rates and periods.

[Rule 3 inserted: Gazette 1 Mar 1994 p. 789.]

4. Appeals under Act

The *Criminal Procedure Rules 2005* apply to and in respect of reviews and appeals under Part 5 of the Act.

[Rule 4 inserted: Gazette 21 Feb 2007 p. 585.]

Order 81C — Road traffic legislation rules

[Heading inserted: Gazette 21 Feb 2007 p. 585; amended: Gazette 19 Dec 2014 p. 4845.]

1. Terms used

In this Order —

CEO has the meaning given in the *Road Traffic (Administration) Act 2008* section 4;

RT (AD) Act means the *Road Traffic (Authorisation to Drive) Act 2008*.

[Rule 1 inserted: Gazette 19 Dec 2014 p. 4846.]

2. Applications under RT (AD) Act s. 24, 27 or 35, how to be made

(1) An application under the RT (AD) Act section 27 must be made by filing a Form No. 101 and any affidavit that the applicant proposes to tender at the hearing of the application.

(2) An application under the RT (AD) Act section 35(1) must be made by filing a Form No. 102 and any affidavit that the applicant proposes to tender at the hearing of the application.

(3) An application under the RT (AD) Act section 35(2) must be made by filing —

(a) a Form No. 103 and any affidavit that the applicant proposes to tender at the hearing of the application; and

(b) a copy of the record of the convictions of the holder of the extraordinary licence to which the application relates.

(4) An application under the RT (AD) Act section 24(1) must be made by filing a Form No. 104 and any affidavit that the applicant proposes to tender at the hearing of the application.

(5) When a form and any affidavit is filed under this rule, 3 copies must also be filed.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 585-6; amended: Gazette 19 Dec 2014 p. 4846.]

3. Registrar's functions when application is made

(1) A registrar may reject an application made under rule 2 if the registrar has reason to believe that the application cannot be made to or heard by the Court under the RT (AD) Act section 29 or 35(3).

(2) On accepting a Form No. 101, 103 or 104, a registrar must —

(a) list the application for hearing on the earliest convenient date that is at least 14 clear days after the date on which the form is filed; and

(b) insert the hearing details on the form and its 3 copies; and

(c) return 3 copies of the form and any accompanying affidavit to the applicant.

(3) On accepting a Form No. 102, a registrar must —

(a) list the application for hearing on the earliest convenient date; and

(b) insert the hearing details on the form and its 3 copies; and

(c) return 3 copies of the form and any accompanying affidavit to the applicant.

[Rule 3 inserted: Gazette 21 Feb 2007 p. 586; amended: Gazette 19 Dec 2014 p. 4846.]

4. Applicant to serve application etc.

(1) On receiving the copies of a Form No. 101, 102 or 104 and any accompanying affidavit from a registrar, the applicant must

serve one copy of the form and any accompanying affidavit on the CEO.

(2) On receiving the copies of a Form No. 103 and any accompanying affidavit from a registrar, the CEO must serve one copy on the holder of the extraordinary licence to which the application relates.

[Rule 4 inserted: Gazette 28 Jul 2010 p. 3484-5; amended: Gazette 19 Dec 2014 p. 4846-7.]

5. Hearing of application, appearance at

(1) The CEO is entitled to be heard on an application made under the RT (AD) Act section 24(1), 27 or 35(1).

(2) If the Court is satisfied that the CEO has been served with an application made under the RT (AD) Act section 24(1), 27 or 35(1), the Court may deal with it in the absence of the CEO.

[(3), (4) deleted]

(5) If the Court is satisfied that the holder of the extraordinary licence to which an application made under the RT (AD) Act section 35(2) relates has been served with it, the Court may deal with it in the absence of the holder.

[Rule 5 inserted: Gazette 21 Feb 2007 p. 587; amended: Gazette 28 Jul 2010 p. 3485; 19 Dec 2014 p. 4847; 4 Sep 2015 p. 3698.]

6. Hearing of application, procedure on

(1) At the hearing of an application made under the RT (AD) Act section 27 or 35(1) or (2) —

(a) the applicant bears the onus of proof; and

(b) the standard of proof is on the balance of probabilities.

(2) At the hearing of an application made under the RT (AD) Act section 24(1), 27 or 35(1) or (2), affidavit evidence may be adduced by a party if the maker of the affidavit is present.

[Rule 6 inserted: Gazette 21 Feb 2007 p. 587; amended: Gazette 19 Dec 2014 p. 4847.]

7. CEO to be notified of decision

As soon as practicable after the Court decides an application made under the RT (AD) Act section 24(1), 27 or 35(1) or (2), a registrar must give the CEO notice of the decision including the details of any order made.

[Rule 7 inserted: Gazette 21 Feb 2007 p. 587; amended: Gazette 19 Dec 2014 p. 4848.]

[Order 81D deleted: Gazette 20 Dec 2016 p. 5842.]

Order 81E — Cross-vesting

[Heading inserted: Gazette 1 Jul 1988 p. 2140.]

1. Terms used

In this Order, unless the contrary intention appears —

Act means the *Jurisdiction of Courts (Cross-vesting) Act 1987* of Western Australia;

cross-vesting laws means the Act, the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth, and any other law of the Commonwealth or a State or Territory relating to cross-vesting of jurisdiction;

proceeding includes an action, cause or matter;

special federal matter has the same meaning as in the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth.

[Rule 1 inserted: Gazette 1 Jul 1988 p. 2140.]

2. Application of this Order

This Order applies to proceedings to which cross-vesting laws apply.

[Rule 2 inserted: Gazette 1 Jul 1988 p. 2140.]

3. Commencing proceedings that rely on cross-vesting laws

(1) Subject to subrule (2) a proceeding in which a party relies on cross-vesting laws shall be commenced in accordance with the rules of court.

(2) In a case of doubt or difficulty as to the manner of commencement of a proceeding the Court may give directions.

(3) An application under subrule (2) shall be by summons and may be *ex parte*.

(4) A party who relies on cross-vesting laws shall indorse the process by which those laws are invoked with a statement identifying each claim or ground of defence, as the case may be, in respect of which cross-vesting laws are invoked.

(5) A failure to comply with subrule (4) does not invalidate the process.

(6) Where a party has not complied with subrule (4) and wishes to invoke cross-vesting laws, that party shall apply to the Court for directions and the Court may give any direction that it could give under rule 6.

[Rule 3 inserted: Gazette 1 Jul 1988 p. 2141; amended: Gazette 28 Jun 2011 p. 2552.]

4. Special federal matters

(1) Where a matter for determination is a special federal matter the plaintiff or the defendant, as the case may be, shall give particulars of that special matter in the indorsement required under rule 3(4).

(2) The Court shall not determine a proceeding which raises for determination a special federal matter unless it is satisfied that the notice required by section 6(3)(a) of the Act sufficiently specifies the nature of that special federal matter.

[Rule 4 inserted: Gazette 1 Jul 1988 p. 2141.]

*[**5.** Deleted: Gazette 26 Aug 1994 p. 4413.]*

6. Directions for conduct of proceedings

(1) The first party to invoke cross-vesting laws shall take out a summons for directions and serve it on all other parties.

(2) Where the plaintiff is required to take out the summons for directions the summons shall be taken out and served within 7 days of the plaintiff being served with the first notice of appearance.

(3) Where a defendant is required to take out the summons for directions the summons shall be taken out and served within 7 days of the delivery or service, as the case may be, of the process that invokes cross-vesting laws.

(4) When a proceeding is transferred to the Court from another court the party who originated the proceeding shall within 14 days of the date of the order transferring the proceeding file and serve a summons for directions and in default any other party may do so or the Court may call the parties before it of its own motion.

(5) On the hearing of the summons for directions the Court shall give any direction or make any decision as to the conduct of the proceeding that the Court thinks proper.

(6) The Court may at the trial or hearing of the proceeding vary an order or decision made on the summons for directions.

[Rule 6 inserted: Gazette 1 Jul 1988 p. 2141.]

7. Transfer of proceedings

(1) Unless the Court orders otherwise when the Court makes an order transferring a proceeding to another court a registrar shall send to the court to which the proceeding is transferred all documents filed and orders made in the proceeding.

(2) When a proceeding is transferred to the Court from another court a registrar shall give it a number or title.

[Rule 7 inserted: Gazette 1 Jul 1988 p. 2141.]

8. Applications to be dealt with by judge

An application for the transfer or removal of a proceeding under cross-vesting laws must be determined by a judge.

[Rule 8 inserted: Gazette 1 Jul 1988 p. 2142.]

9. Transfer on Attorney General's application (Act s. 5 or 6)

An application by an Attorney General under section 5 or 6 of the Act for the transfer of a proceeding may be made by summons without the Attorney General becoming a party to the proceeding.

[Rule 9 inserted: Gazette 1 Jul 1988 p. 2142.]

10. Transfer under Act s. 8, Court's powers on

(1) Where a proceeding is removed to the Court pursuant to section 8 of the Act the Court may immediately on that removal give any direction, make any decision or direct the parties to take any step that the Court sees fit.

(2) The powers exercisable under subrule (1) —

(a) are in addition to the powers exercisable under rule 6; and

(b) include the power to give any direction that could have been given by the court or tribunal from which the proceeding was removed.

[Rule 10 inserted: Gazette 1 Jul 1988 p. 2142; amended: Gazette 28 Jun 2011 p. 2552.]

11. Procedure if laws etc. of other place to apply under Act s. 11(1)

(1) If the law of another State or Territory must be applied under section 11(1)(b) of the Act in determining a right of action arising under a written law of that State or Territory, the pleadings must identify the right of action and the written law under which it arises.

(2) If a party seeks to have rules of evidence and procedure, being rules that are applied in another court, applied under section 11(1)(c) of the Act in dealing with a matter for determination in the proceeding, the pleadings must include a statement to that effect.

(3) If a party proposes to claim that the law of another State or Territory should be applied under section 11(1)(b) of the Act or that rules of evidence and procedure, being rules that are applied in another court, should be applied under section 11(1)(c) of the Act —

(a) the party shall apply to the Court for directions on that matter before the proceeding is set down for trial;

(b) the Court may give directions in relation to that matter —

(i) on application being made under paragraph (a); or

(ii) at any time of its own motion,

and may revoke or vary any direction given by it in relation to that matter.

[Rule 11 inserted: Gazette 1 Jul 1988 p. 2142; amended: Gazette 28 Jun 2011 p. 2555.]

Order 81F — *Proceeds of Crime Act 2002* (Commonwealth) rules

[Heading inserted: Gazette 21 Feb 2007 p. 592.]

1. Terms used

(1) In this Order, unless the contrary intention appears —

Act means the *Proceeds of Crime Act 2002* of the Commonwealth;

section means a section of the Act.

(2) If a term used in this Order is defined in the Act, it has the same meaning in this Order as it has in the Act, unless the contrary intention appears.

[Rule 1 inserted: Gazette 21 Feb 2007 p. 592.]

2. Applications under Act, how to be made

(1) Any application that may be made under the Act must be made in accordance with this rule.

(2) This rule is subject to and does not affect the operation of section 17, 18, 19, 20, 26, 61, 136 or 163.

(3) An application that initiates proceedings in the Court in relation to a suspect or particular property —

(a) must be made —

(i) by notice of motion (Form No. 65) if no notice of the application is required to be given; or

(ii) otherwise by originating summons (Form No. 74);

and

(b) must be titled: In the matter of the *Proceeds of Crime Act 2002* (Cwlth) and [*name of the suspect concerned, or name of the owner of or a description of the property concerned*]; and

(c) must call the person making the application the 'applicant'; and

(d) must call the person against whom the proceedings are initiated the 'respondent'.

[(3A) deleted]

(4) An application in proceedings under the Act that have been initiated under subrule (3) —

(a) must be made by summons (Form No. 77); and

(b) must call the person making the application the 'applicant'; and

(c) must call the person entitled to respond to the application the 'respondent'.

(5) Unless the Court orders otherwise —

(a) an application for an order under the Act must be accompanied by an affidavit that states the facts and circumstances on which the application is based; and

(b) the application and the affidavit must be filed and served on the person against whom the order is sought.

(6) Subrule (5) does not apply to —

(a) an application under section 17, 18, 19 or 20 for a restraining order; or

(b) an application under section 48 for a forfeiture order; or

(c) an application under section 116 for a pecuniary penalty order; or

(d) an application under section 152 for a literary proceeds order,

against a person if the application is made at the time the person is convicted.

(7) Subrule (5) does not apply to an application for an order under the Act that is filed together with the written consent to the

making of the order of every person whose consent the Court needs in order to make the order by consent.

(8) If under the Act a person applying for an order or exclusion is required to give written notice to the DPP of the grounds on which the order or exclusion is sought, the person must file a copy of the grounds with the application for the order or exclusion.

[Rule 2 inserted: Gazette 21 Feb 2007 p. 592-3; amended: Gazette 27 Feb 2018 p. 621; SL 2022/53 r. 4.]

3. Service on DPP (Cwlth) in Perth

Service of an application under the Act and any document required to accompany the application on the DPP is effected if the application and document are served on the DPP's office in Perth.

[Rule 3 inserted: Gazette 21 Feb 2007 p. 593.]

4. DPP to file grounds for contesting application

If under the Act the DPP is required to give a person applying for an order or exclusion notice of any grounds on which the DPP intends to contest the application, the DPP must file a copy of the grounds at least 5 clear days before the date set for the hearing of the application.

[Rule 4 inserted: Gazette 21 Feb 2007 p. 594.]

5. Summons for directions

(1) If an application under the Act is made by originating summons, the applicant must apply by summons to the Court for directions within 7 days after the time limited for appearance.

(2) If the applicant does not comply with subrule (1), a respondent may apply to the Court for directions.

[Rule 5 inserted: Gazette 21 Feb 2007 p. 594.]

6. Court may give directions at any time

On the hearing of a summons for directions, or on any other application, or on its own initiative at any time, the Court may —

(a) inquire as to the persons who may be affected by the relief claimed and for the purpose of that inquiry direct any party to supply any information which the Court may require;

(b) give directions as to the persons to be added as parties as being interested in the relief claimed or to represent classes of persons so interested;

(c) direct that notice of the application be served on any person;

(d) give any other directions or make any other orders as may be necessary for the just and expeditious disposal of the proceedings.

[Rule 6 inserted: Gazette 21 Feb 2007 p. 594.]

7. Representative respondent

If a person is added as a respondent and other persons have the same or a similar interest as that respondent, the Court may order that —

(a) that respondent be authorised to defend the proceedings on behalf of or for the benefit of all persons so interested; and

(b) all persons so interested shall be bound by any order made in the proceedings.

[Rule 7 inserted as rule 6: Gazette 21 Feb 2007 p. 594; renumbered as rule 7: Gazette 22 Feb 2008 p. 644.]

8. Evidence on applications

Evidence in support of or opposing an application for an order under the Act is to be by affidavit unless the Court orders otherwise.

[Rule 8 inserted as rule 7: Gazette 21 Feb 2007 p. 594; renumbered as rule 8: Gazette 22 Feb 2008 p. 644.]

9. Court may order separate hearing

If after proceedings are initiated under the Act an application is made in the proceedings, the Court may on application, or on its own initiative at any time, order that the application be heard and determined separately.

[Rule 9 inserted as rule 8: Gazette 21 Feb 2007 p. 595; renumbered as rule 9: Gazette 22 Feb 2008 p. 644.]

Order 81FA — *Criminal Property Confiscation Act 2000* rules

[Heading inserted: Gazette 22 Feb 2008 p. 644.]

Part 1 — Preliminary

[Heading inserted: Gazette 27 Sep 2002 p. 4830.]

1. Terms used

In this Order, unless the contrary intention appears —

CCC means the Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003* section 8(1);

confiscable property declaration means a declaration under section 28 of the Confiscation Act 2000;

Confiscation Act 2000 means the *Criminal Property Confiscation Act 2000*;

crime-used property substitution declaration means a declaration under section 22 of the Confiscation Act 2000;

criminal benefits declaration means a declaration under section 16 or 17 of the Confiscation Act 2000;

examination order means an order made by the court under section 58(1) of the Confiscation Act 2000;

freezing notice means a freezing notice issued under section 34 of the Confiscation Act 2000;

freezing order means an order under section 43 of the Confiscation Act 2000;

interstate confiscation declaration has the same meaning as in the Confiscation Act 2000;

interstate freezing order has the same meaning as in the Confiscation Act 2000;

monitoring order means an order under section 68(1) of the Confiscation Act 2000;

objection means an objection under section 79 of the Confiscation Act 2000 to the confiscation of property;

production order means an order under section 63 of the Confiscation Act 2000;

sham transaction order means an order under section 135(2) of the Confiscation Act 2000;

suspension order means an order under section 68(2) of the Confiscation Act 2000;

unexplained wealth declaration means a declaration under section 12 of the Confiscation Act 2000.

[Rule 1 inserted: Gazette 27 Sep 2002 p. 4830-1; amended: Gazette 28 Aug 2018 p. 2992.]

Part 2 — Proceedings under the Confiscation Act 2000

[Heading inserted: Gazette 27 Sep 2002 p. 4831.]

2. Declarations under Act s. 30, applications for

(1) An application by the DPP or the CCC under section 30(1) of the Confiscation Act 2000 for a declaration that property has been confiscated may be made *ex parte*.

(2) If, immediately before the property was confiscated or is alleged to have been confiscated under section 6, 7 or 8 of the Confiscation Act 2000, proceedings in relation to the property were on foot under that Act or the *Misuse of Drugs Act 1981*, an application is made by summons or motion in the proceedings.

(3) If no proceedings were on foot as mentioned in subrule (2), an application is made by originating motion of Form 64.

(4) On hearing an application, the court may give any directions it thinks fit, whether or not it finds that the property has been confiscated.

[Rule 2 inserted: Gazette 27 Sep 2002 p. 4831; amended: Gazette 28 Aug 2018 p. 2992.]

3. Other declarations or orders, applications for

(1) Subject to subrules (2) and (3), an application under the Confiscation Act 2000 for any of the following declarations or orders is made by filing an originating summons in Form 75 —

(a) an unexplained wealth declaration;

(b) a criminal benefits declaration;

(c) a crime-used property substitution declaration;

(d) a confiscable property declaration;

(e) a freezing order, except an *ex parte* application;

(f) a sham transaction order;

(g) an examination order;

(h) a production order;

(i) a monitoring order;

(j) a suspension order;

(k) an order under section 85, 91, 93 or 94 of the Confiscation Act 2000.

(2) If an application for any of the following declarations or orders is made in the course of other proceedings under the Confiscation Act 2000 the application is made by motion in the proceedings —

(a) an unexplained wealth declaration;

(b) a criminal benefits declaration;

(c) a crime-used property substitution declaration;

(d) a confiscable property declaration;

(e) an examination order;

(f) a production order;

(g) an order under section 85, 91, 93 or 94 of the Confiscation Act 2000.

(3) An *ex parte* application for any of the following orders is made by originating motion in Form 64 —

(a) a freezing order;

(b) an examination order;

(c) a production order;

(d) a monitoring order;

(e) a suspension order.

[Rule 3 inserted: Gazette 27 Sep 2002 p. 4831-2; amended: Gazette 10 Aug 2004 p. 3185.]

4. Affidavit in support required for some applications

When an application is made in accordance with rule 3(1) or (3), the applicant must file with the application an affidavit setting out the facts and circumstances on which the application is based.

[Rule 4 inserted: Gazette 27 Sep 2002 p. 4832.]

5. Objections to confiscation of property, making of

(1) An objection to the confiscation of property frozen under a freezing notice is made by filing an originating summons in Form 75.

(2) An objection to the confiscation of property frozen under a freezing order is made by summons in the proceedings on the application for the freezing order.

[Rule 5 inserted: Gazette 27 Sep 2002 p. 4832.]

6. DPP or CCC to be served

When a party (other than the DPP or the CCC) files an objection or makes an application under this Order, the party is to serve a copy of the objection or application on the DPP or the CCC, as the case requires.

[Rule 6 inserted: Gazette 27 Sep 2002 p. 4832; amended: Gazette 28 Aug 2018 p. 2992.]

7. Directions

[(1) deleted]

(2) The Court may do any or all of the following —

(a) inquire as to the persons who may be affected by the relief the plaintiff seeks;

(b) for the purpose of an inquiry under paragraph (a) direct the plaintiff and the defendant to give the Court any information it requires;

(c) give directions as to the persons to be added as parties as being interested in the relief claimed or to represent classes of persons interested in the relief claimed.

[Rule 7 inserted: Gazette 27 Sep 2002 p. 4832-3; amended: SL 2022/53 r. 5.]

8. Conference not required

Order 59 rule 9 does not apply to a summons in proceedings under the Confiscation Act 2000.

[Rule 8 inserted: Gazette 27 Sep 2002 p. 4833.]

9. Representative defendant

If a person has been added as a defendant in proceedings under the Confiscation Act 2000, and other persons (including unborn

persons) have the same interest as the defendant or a similar interest, the Court may —

(a) authorise the defendant to defend the proceedings on behalf of or for the benefit of all the interested persons; and

(b) order that all the interested persons are bound by any order made in the proceedings.

[Rule 9 inserted: Gazette 27 Sep 2002 p. 4833.]

Part 3 — Registration of freezing notices and interstate orders

[Heading inserted: Gazette 27 Sep 2002 p. 4833.]

10. Freezing notices, registration of etc.

(1) A register called the Register of Freezing Notices is to be kept at the Central Office.

(2) When a freezing notice is filed in the court under section 36(6) of the Confiscation Act 2000, the proper officer must —

(a) assign a number to it; and

(b) enter particulars of the notice in the register; and

(c) indorse the notice to the effect that it was registered on the day on which the particulars were entered.

(3) When a notice of cancellation of a freezing notice is filed in the court under section 40(2)(b) of the Confiscation Act 2000, or a freezing notice is set aside under Part 6 of the Act, the proper officer must enter the cancellation or setting aside in the register.

[Rule 10 inserted: Gazette 27 Sep 2002 p. 4833-4.]

11. Interstate orders, registration of etc.

(1) A person desiring to register an interstate freezing order or an interstate confiscation order may file a copy of the order sealed with the seal of the court that made the order.

(2) When a sealed copy of an interstate freezing order is filed, the proper officer must —

(a) assign a number to it; and

(b) enter the particulars of it in a register kept for the purpose; and

(c) indorse the order to the effect that it was registered on the day on which the particulars were entered.

(3) When the registration of an interstate freezing order or an interstate confiscation order is cancelled under section 122 of the Confiscation Act 2000, the proper officer must enter the cancellation in the register.

[Rule 11 inserted: Gazette 27 Sep 2002 p. 4834; amended: Gazette 22 Feb 2008 p. 645.]

Order 81G — *Criminal and Found Property Disposal Act 2006* rules

[Heading inserted: Gazette 22 Feb 2008 p. 645.]

1. Terms used

(1) In this Order, unless the contrary intention appears —

Act means the *Criminal and Found Property Disposal Act 2006*;

claim means an application made under the Act to the Court for an order under the Act.

(2) If a term is given a meaning in the Act, it has the same meaning in this Order, unless the contrary intention appears.

[Rule 1 inserted: Gazette 22 Feb 2008 p. 645.]

2. General matters

(1) Proceedings on a claim are proceedings in the Court's civil jurisdiction and the civil standard of proof applies.

(2) Without otherwise affecting Order 37, an affidavit filed under this Order —

(a) may include material other than evidence that the deponent could give orally in court, such as hearsay or a belief or opinion; but

(b) must include the source of any hearsay or the grounds for any belief or opinion.

(3) In proceedings on a claim, the Court, on an application by a party to the claim or on its own initiative —

(a) may shorten any period in this Order;

(b) may extend any period in this Order, even if the period has elapsed;

(c) may modify or dispense with any requirement of this Order;

(d) may, by order, give directions as to the conduct of the proceedings;

(e) may adjourn the proceedings,

and may do so on terms.

[Rule 2 inserted: Gazette 22 Feb 2008 p. 645-6.]

3. Claims, how to be made

(1) To make a claim, a person must file a Form No. 108.

(2) A claim must name as a defendant any person who would be affected by any order stated in the claim.

(3) The hearing date stated in a claim must be at least 21 days after the date on which it is filed.

(4) A claim must be filed with one or more affidavits that state the facts and circumstances on which it is based.

(5) A claim, and any affidavit filed with it, must be served by the claimant —

(a) on each defendant to the claim; and

(b) in accordance with the *Interpretation Act 1984* section 76; and

(c) within 7 days after the date on which the claim is filed.

[Rule 3 inserted: Gazette 22 Feb 2008 p. 646.]

4. Defendant may file memorandum of appearance

A defendant who is served with a claim and who wants to respond to it or be heard at its hearing must enter an appearance under Order 12.

[Rule 4 inserted: Gazette 22 Feb 2008 p. 647.]

5. Defendant may file affidavit in response

(1) A defendant who is served with a claim may file an affidavit that states the facts and circumstances on which the defendant relies.

(2) Any such affidavit must —

(a) be filed within 10 days after the date on which the defendant is served with the claim; and

(b) be served on each other party to the claim in accordance with Order 72; and

(c) be served within 3 working days after the date on which it is filed.

[Rule 5 inserted: Gazette 22 Feb 2008 p. 647.]

6. Applications in course of proceedings on claim

(1) A party to a claim may at any time apply to the Court for an order that may be made under rule 2(3).

(2) To make the application, the party must file a Form No. 86 with any necessary changes and any affidavit on which the party intends to rely.

(3) The applicant must serve a copy of the filed documents on each other party to the claim at least 3 working days before the hearing date for the application.

[Rule 6 inserted: Gazette 22 Feb 2008 p. 647.]

7. Hearing claims

At least 3 working days before the hearing date of a claim, the claimant must file and serve on each other party to the claim a draft of the final orders that the claimant wants the Court to make.

[Rule 7 inserted: Gazette 22 Feb 2008 p. 647.]

8. Costs

(1) The Court may order a party to a claim to pay the whole or a part of another party's costs of proceedings on the claim.

(2) The Court may fix the amount of costs to be paid or may order the costs to be taxed.

(3) The amount of any costs ordered to be paid must be in accordance with any relevant scale within the meaning given by Order 66 rule 11(1).

[Rule 8 inserted: Gazette 22 Feb 2008 p. 648.]

9. Documents cannot be filed electronically

A claim, affidavit or other document to be filed under this Order cannot be filed electronically.

[Rule 9 inserted: Gazette 27 Feb 2018 p. 621.]

Order 81H — *Surveillance Devices Act 1998* rules

[Heading inserted: Gazette 22 Feb 2008 p. 649.]

1. Term used: Act

In this Order —

Act means the *Surveillance Devices Act 1998*.

[Rule 1 inserted: Gazette 26 Nov 1999 p. 5903.]

2. Warrants, applications for

(1) An application under the Act for a warrant, other than an application under section 16 of the Act, is to be made by originating motion and accompanied by an affidavit in support.

(2) In the case of a warrant under section 16 of the Act, the applicant is to file an originating motion in respect of the warrant when he or she forwards to the Court the documents referred to in section 17 of the Act.

[Rule 2 inserted: Gazette 26 Nov 1999 p. 5904.]

3. Report to judge (Act s. 21 or 30)

A report to a judge under section 21 or 30 of the Act is to be —

(a) sworn as an affidavit in accordance with these rules; and

(b) filed with an originating motion.

[Rule 3 inserted: Gazette 26 Nov 1999 p. 5904.]

4. Order allowing publication etc. (Act s. 31), application for

An application for an order under section 31 of the Act is to be made by originating motion and accompanied by an affidavit in support.

[Rule 4 inserted: Gazette 26 Nov 1999 p. 5904.]

5. Identification of persons in documents

In a document filed in a proceeding under the Act a person may be referred to by —

(a) the person's initials; or

(b) a numerical reference identifying the law enforcement agency of which the applicant in the proceeding is a member or officer and the year in which the proceeding was commenced.

[Rule 5 inserted: Gazette 26 Nov 1999 p. 5904.]

6. Practice Directions

(1) The Court may from time to time issue Practice Directions —

(a) to facilitate compliance with the confidentiality requirements of the Act; and

(b) as to the practice and procedure applicable in proceedings under the Act.

(2) All parties to proceedings under the Act must comply with any such Practice Directions.

[Rule 6 inserted: Gazette 26 Nov 1999 p. 5904; amended: Gazette 27 Feb 2018 p. 621.]

7. Documents cannot be filed electronically

An originating summons, affidavit or other document to be filed under this Order cannot be filed electronically.

[Rule 7 inserted: Gazette 27 Feb 2018 p. 622.]

Order 82 — Sheriff's rules

*[**1-6.** Deleted: Gazette 21 Feb 2007 p. 595.]*

7. Service of process by sheriff

(1) The sheriff shall, if requested so to do by any party or his solicitor, serve or cause to be served in Western Australia any writ, notice, order, summons or other document issued, made or prepared in or in relation to any cause or matter in respect of which personal service is required by statute or by any rule or practice of the Court.

(2) Such request shall be in writing, and shall contain the instructions for service.

(3) The service of any such document may be proved by the affidavit of the bailiff or officer effecting service, and no subpoena to compel the attendance of the sheriff or any bailiff or officer in respect of any matter arising out of such service shall be issued except by leave of a judge or a master, which may be obtained *ex parte*.

[Rule 7 amended: Gazette 30 Nov 1984 p. 3952.]

*[**8.** Deleted: Gazette 21 Feb 2007 p. 595.]*

9. Fees etc. payable to sheriff, disputes as to

In case the sheriff and the person liable or claimed to be liable to pay the amount of any fees and charges payable to the sheriff differ as to the liability to pay the same or as to the amount thereof, the question of liability shall be decided by the Principal Registrar or the Principal Registrar shall tax such fees or charges as the case may be.

[Rule 9 amended: Gazette 30 Jul 1982 p. 2947.]

*[**10.** Deleted: Gazette 21 Feb 2007 p. 595.]*

11. Deposit on account of sheriff's fees

(1) Upon request being made for the service of any process or document, or for any work for which fees are properly chargeable in the sheriff's office, the sheriff may require a deposit of money to meet such fees. He may also require an undertaking in writing from the solicitor or if no solicitor is acting, from the party making the request, to pay any further fees or charges which may become payable beyond the amount so deposited.

(2) Where any person has deposited an amount in excess of the fees which are found to be payable, the sheriff shall, upon the amount actually payable being ascertained, return the amount so deposited in excess.

[Rule 11 amended: Gazette 21 Feb 2007 p. 595.]

[12, 13. *Deleted: Gazette 21 Feb 2007 p. 595.]*

14. Travel distance by sheriff for service

No sheriff's officer shall be compellable to go more than 65 km by the shortest route usually used in travelling from his office or residence for the service of any writ of summons, notice, order, summons or other document, nor shall an allowance for more than 150 km be made under Schedule 2 to the *Supreme Court (Fees) Regulations 2002* in any case without the order of a judge or a master.

[Rule 14 amended: Gazette 7 Dec 1973 p. 4489; 30 Nov 1984 p. 3952; 26 Aug 1994 p. 4415; 27 Jul 2001 p. 3895; 21 Feb 2007 p. 595.]

[15. *Deleted: Gazette 21 Feb 2007 p. 595.]*

16. Non-payment of sheriff's fees, consequences of

If any solicitor, who has made a request for the service of any process or document, or for any work for which fees are

properly chargeable in the sheriff's office, makes default in payment of any of the fees or charges properly chargeable, for a period of 7 days after demand in writing by the sheriff, the sheriff may report to the Court the name of the solicitor so making default, and the Court may thereupon make all necessary orders to enforce payment by the solicitor of such fees or charges.

[Rule 16 amended: Gazette 21 Feb 2007 p. 595.]

Order 83 — Consolidation of pending causes and matters

1. Causes may be consolidated

Whenever any issues between the same parties can be conveniently tried together, or whenever it appears desirable notwithstanding that the parties are not identical and that the evidence necessary to prove the issues is not identical, the Court may consolidate any number of causes or matters in order to quiet all claims relating to one subject matter, transaction or event, or to substantially similar subject matters, transactions or events.

2. Consolidation with action removed from another court

In the exercise of jurisdiction under this Order the Court may order the consolidation with any action pending in the Supreme Court of any action remitted or removed to the Supreme Court from any other court.

3. Directions

The Court shall make all necessary directions for the pre-trial procedure, and for the trial or determination of such consolidated causes or matters.

[Order 83A deleted: Gazette 27 Jul 2001 p. 3895.]

Order 84 — General rules

1. Repealed Orders not revived

No Order or rule annulled by any former Order shall be revived by any of these rules, unless expressly so declared.

2. Cases not provided for

(1) Where no provision is made by law or by these rules, the previous practice of this Court shall be followed or if there be no such practice, or if there is doubt as to what is the correct procedure, the Court may direct (and *ex parte* if it thinks fit) what shall be done in each particular instance, or that the procedure that has been adopted shall be sufficient.

(2) A step taken in accordance with a direction given under subrule (1) shall be deemed to be regular and sufficient.

(3) A direction given under subrule (1) is subject to review at any time by the Court, and such further or other directions may be given as the Court thinks necessary or proper in the interests of justice.

[Rule 2 amended: Gazette 28 Jun 2011 p. 2552.]

3. Publication of written reasons for judgment

Where a judgment is pronounced in a cause or matter, either by the Court of Appeal or a single judge, and the reasons and opinion of a judge are reduced to writing, it is sufficient to state orally the opinion of the judge without stating the reasons for the opinion, but his written reasons and opinion shall be then published by delivering them to the proper officer.

[Rule 3 amended: Gazette 29 Apr 2005 p. 1795.]

4. Bankruptcy jurisdiction, duty of Registrar in Bankruptcy as to seals, records etc.

(1) The Registrar in Bankruptcy for the District of the State of Western Australia appointed pursuant to the provisions of the *Bankruptcy Act 1966* of the Commonwealth, shall keep a seal, called the Bankruptcy Seal, bearing a representation of the armorial bearings of the State, and the words "The Supreme Court of Western Australia exercising Federal Jurisdiction in Bankruptcy" which shall be affixed to all documents which are authorised or required to be sealed by the provisions of the said Bankruptcy Act or by the Bankruptcy Rules. Whenever for any reason any such seal is replaced or superseded by another seal, the seal replaced or superseded shall be delivered forthwith by the said Registrar in Bankruptcy to the registrar of the Supreme Court, to be held or disposed of by him in accordance with the directions of the Chief Justice.

(2) The said Registrar in Bankruptcy shall have the custody of all the records of the Court in the exercise of its Federal Jurisdiction in Bankruptcy, and of all documents filed in the Federal Bankruptcy Registry or ordered to be deposited therein in pursuance of the provisions of any enactment of the Commonwealth relating to Bankruptcy or any rules made thereunder.

[Rule 4 amended: Gazette 26 Aug 1994 p. 4415; 19 Apr 2005 p. 1300.]

5. *Public Trustee Act 1941* s. 27, proceedings under

Claims and complaints under section 27 of the *Public Trustee Act 1941* shall be brought by summons before a judge in chambers and must be supported by affidavit. All parties interested must be served with a copy of such summons and affidavit, and such parties may appear in opposition, either personally or by counsel, or solicitor.

[Rule 5 amended: Gazette 12 Nov 1976 p. 4277.]

6. Sale proceeds paid into court, claimants to must file affidavit

In the case of applications under Acts of Parliament directing the purchase money of any property sold to be paid into court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and accept the same.

[Rule 6 amended: Gazette 26 Aug 1994 p. 4415.]

7. Account by solicitor to client, applying for and order as to

Where the relationship of solicitor and client exists, or has existed, an originating summons may be issued by the client or his representatives for the delivery of a cash account, or the payment of moneys, or the delivery of securities, and the Court may from time to time order the respondent to deliver to the applicant a list of the moneys or securities which he has in his custody or control on behalf of the applicant, or to bring into court the whole, or any part of the same, within such time as the Court may order. In the event of the respondent alleging that he has a claim for costs, the Court may make such provision for the payment or security thereof or the protection of the respondent's lien (if any) as the Court may think fit.

8. Interest and apportionment, certification of

The Court may order the calculation of interest, or the apportionment of a fund, to be certified by a registrar and to be acted upon by the Accountant or any other person without further order.

[Rule 8 inserted: Gazette 21 Feb 2007 p. 595.]

9. *Admiralty Act 1988* (Cwlth) rules, registrar etc. may exercise powers etc. under

(1) In this rule, ***Admiralty Rules*** means the Admiralty Rules made under the *Admiralty Act 1988* of the Commonwealth.

(2) A registrar may exercise the powers or functions or perform the duties of the registrar under the Admiralty Rules.

(3) The sheriff or a deputy of the sheriff appointed pursuant to section 158 of the Supreme Court Act may exercise the powers or functions or perform the duties of the Marshal under the Admiralty Rules.

[Rule 9 inserted: Gazette 30 Mar 1990 p. 1574; amended: Gazette 30 Oct 1992 p. 5310; 21 Feb 2007 p. 595.]

Order 85 — *Federal Courts (State Jurisdiction) Act 1999* rules

[Heading inserted: Gazette 22 Feb 2008 p. 649.]

1. Terms used

(1) In this Order, unless the contrary intention appears —

Act means the *Federal Courts (State Jurisdiction) Act 1999*;

section means a section of the Act.

(2) Unless the contrary intention appears, words defined in the Act and used in this Order have the same respective meanings as in the Act.

[Rule 1 inserted: Gazette 5 Nov 1999 p. 5629.]

2. Title of proceedings

An application under this Order shall be entitled "In the matter of the *Federal Courts (State Jurisdiction) Act 1999*, [section number, if applicable] and in the matter of proceedings in the [name of Commonwealth court] in [number of the Commonwealth court proceedings] between [names of parties to the Commonwealth court proceedings]".

[Rule 2 inserted: Gazette 5 Nov 1999 p. 5629.]

3. No proceedings on ineffective judgment before application to have it registered

(1) If a person wants to take any proceedings in the Supreme Court in respect of an ineffective judgment, the person must first apply to have the judgment registered in the Supreme Court.

(2) Subrule (1) does not apply to an ineffective judgment that is —

(a) an interlocutory judgment or order; or

(b) a relevant order in a proceeding that is the subject of an application under section 11(2).

(3) An application to have an ineffective judgment registered may be made at the same time as an application referred to in rule 6(1)(a).

[Rule 3 inserted: Gazette 5 Nov 1999 p. 5629-30; amended: Gazette 28 Jun 2011 p. 2552.]

4. Ineffective judgment, application for registration of

(1) An application for the registration of an ineffective judgment must be made by originating summons to —

(a) a master in chambers; or

(b) if made at the same time as an application referred to in rule 6(1)(a), to a judge in chambers.

(2) Notice of the application must be given to all parties affected by the ineffective judgment unless the Court orders otherwise.

(3) If an ineffective judgment relates to 2 or more matters some of which are not State matters, the summons must identify the matters in respect of which registration is sought.

(4) The application must be supported by an affidavit that —

(a) exhibits a copy of the ineffective judgment or of the Commonwealth court's record of the judgment; and

(b) states why it is sought to register the judgment.

(5) If the reason for seeking registration of the ineffective judgment is to enforce payment of an amount of money due under the judgment, the affidavit must —

(a) state the amount as at the date of the affidavit; and

(b) state the rate of interest (if any) that applies to the amount; and

(c) state the full name, title, trade or business, and the usual or last known place of abode or business of the judgment creditor and of the judgment debtor, so far as they are known to the deponent; and

(d) state to the best of the deponent's knowledge and belief that the applicant is entitled to enforce the judgment.

[Rule 4 inserted: Gazette 5 Nov 1999 p. 5630.]

5. Ineffective judgments, registration of

The Court is to register an ineffective judgment if satisfied that —

(a) the judgment concerned is an ineffective judgment; and

(b) the application to register it complies with these rules; and

(c) the judgment is not wholly satisfied; and

(d) it is appropriate to do so.

[Rule 5 inserted: Gazette 5 Nov 1999 p. 5630-1.]

6. Act s. 10, application for order under

(1) An application for an order under section 10(1) or (3) in respect of an ineffective judgment must be made —

(a) if the order sought is one that, had the judgment been one of a judge or master of the Supreme Court, could be made by such a judge or master — by summons (with a supporting affidavit) to a judge in chambers; or

(b) if the order sought is one that, had the judgment been one of a judge or master of the Supreme Court, could be made only by the Court of Appeal on an application for leave to appeal or on an appeal — by way of appellate proceedings to the Court of Appeal under the *Supreme Court (Court of Appeal) Rules 2005*.

(2) If an application under subrule (1)(a) also includes an application under rule 3(1) —

(a) the application under subrule (1)(a) must be made by originating summons; and

(b) the supporting affidavit must, in addition to complying with rule 4, exhibit a copy of each document on the Commonwealth court's file, unless that file has been transferred to the Supreme Court or the Supreme Court orders otherwise.

[Rule 6 inserted: Gazette 5 Nov 1999 p. 5631; amended: Gazette 29 Apr 2005 p. 1795; 28 Jun 2011 p. 2552.]

7. Act s. 11, application for order under

(1) An application under section 11(2) in relation to a proceeding in a Commonwealth court must be made by originating summons to a judge in chambers.

(2) The application must be supported by an affidavit that —

(a) summarizes the cause of action in the proceeding to which the relevant order relates; and

(b) exhibits a copy of the relevant order, or of the Commonwealth court's record of the relevant order; and

(c) exhibits a copy of each document on the Commonwealth court's file, unless that file has been transferred to the Supreme Court or the Supreme Court orders otherwise; and

(d) states, in respect of the proceeding in the Commonwealth court, what procedural steps have been completed and what procedural step has been reached; and

(e) states what procedural steps are likely to be taken in the Supreme Court before the proceeding can be listed for a hearing of the action.

[Rule 7 inserted: Gazette 5 Nov 1999 p. 5631-2.]

8. Act s. 11, effect of order under

When an order is made under section 11(2) in relation to a proceeding in a Commonwealth court —

(a) the Principal Registrar is to assign the proceeding the appropriate Supreme Court code or action number; and

(b) the proceeding shall be conducted and dealt with in the Supreme Court in accordance with these rules; and

(c) documents filed in the Commonwealth court —

(i) shall have the same effect and may be used for the same purposes as if they had been documents of the same or a similar nature filed in the Supreme Court; and

(ii) shall not be taken to be irregular only because they do not comply, in form or otherwise, with these rules.

[Rule 8 inserted: Gazette 5 Nov 1999 p. 5632.]

[First Schedule deleted: Gazette 21 Feb 2007 p. 595.]

Form 1

Schedule 2 — Forms

[Heading inserted: Gazette 28 Jun 2011 p. 2555.]

1. Writ of summons (general form) (O. 5 r. 1)

In the Supreme Court of Western Australia. No. of 20 .

Between

A.B., Plaintiff,

and

C.D., Defendant.

To C.D. of in the State of Western Australia.

You are commanded that, within days after the service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in the Supreme Court in an action at the suit of the abovenamed plaintiff; and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

Witness the day of 20 . Chief Justice of Western Australia

Memoranda to be subscribed on Writ.

Note: This writ may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

A defendant may appear to this writ by entering an appearance either personally or by solicitor at the Central Office of the Supreme Court at Perth.

Indorsement of Claim.

The plaintiff's claim is for

Place of trial

(*Where the plaintiff's claim is for a debt or liquidated demand only the following indorsement must be added*): —

If, within the time allowed for entering an appearance, the defendant pays to the plaintiff or to his solicitor or into Court the amount claimed, together with the sum of $ being the costs incurred by the plaintiff up to and including the service of this writ, further proceedings will be stayed: Provided that the defendant may notwithstanding the payment of such costs have the same taxed

by the taxing officer of the Court and if more than one sixth be disallowed the plaintiff shall pay the costs of taxation.

(*If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity this must be shown in the indorsement of claim.*)

This writ was issued by or on behalf of the plaintiff.

The plaintiff's geographical address[1] is:

The plaintiff's service details[2] are:

Indorsement as to service

This writ was served by me at [the defendant *or* one of the defendants] on the day of 20 .

Indorsed the day of 20 .

(Signed)
(Address)

Notes to Form No. 1 —

1. Must be provided unless otherwise ordered by the Court. See Order 71A r. 2 and 3A.

2. Must be in accordance with Order 71A.

[Form 1 amended: Gazette 9 Nov 1973 p. 4165; 29 Mar 1974 p. 1042; 27 Aug 1976 p. 3226; 19 Apr 2005 p. 1300; 21 Feb 2007 p. 596; 28 Jul 2010 p. 3485; 28 Jun 2011 p. 2556; 13 Nov 2015 p. 4650-1.]

2. Writ of summons indorsed with statement of claim (O. 5 r. 1)

[*As in No. 1 except that the following note shall be inserted after the directions for entering an appearance and that a statement of claim shall be substituted for the indorsement of claim.*]

NOTE: If the defendant enters an appearance, then unless a summons for judgment is served on him in the meantime, he must also file a defence at the Central Office of the Supreme Court at Perth, and serve such defence on the solicitor for the plaintiff, within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

Statement of claim.

Place of trial.

[*If the plaintiff's claim is for a debt or liquidated demand only, the indorsement in Form No. 1 beginning "If within the time allowed for entering an appearance" must be added.*]

[Form 2 amended: Gazette 9 Nov 1973 p. 4165; 28 Jun 2011 p. 2556.]

3. Writ of summons to be served outside WA

(*Headings as in No. 1.*)

To C.D. of

*Insert number of days limited for appearance. If notice of the writ is to be served insert here "of notice".

You are commanded that, within * days after service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in the Supreme Court in an action at the suit of the abovenamed plaintiff; and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

Witness (*as in No. 1.*)

[*Memoranda and Indorsements as in No. 1. If the writ is indorsed with a statement of claim the form should be modified to comply with the directions given in No. 2.*]

Further indorsement to be made on the writ before the issue thereof:

This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.

[Form 3 amended: Gazette 9 Nov 1973 p. 4165; 28 Jul 2010 p. 3485-6; 28 Jun 2011 p. 2556; 12 Jun 2012 p. 2452.]

Form 4

4. Notice to defendant in action for possession, foreclosure or sale of mortgaged property (O. 4AA r. 3)

Supreme Court of Western Australia	Action No:
	Notice to defendant in action for possession, foreclosure or sale of mortgaged property
Parties	Plaintiff Defendant

Notice to [*insert name of defendant*]

IMPORTANT NOTICE AND HOW TO RESPOND

This is an IMPORTANT NOTICE issued to you because a claim has been made against you in the Supreme Court of Western Australia. If you do not respond you may lose ownership of the property described below and action may be taken to sell that property.

Attached to this notice is a writ of summons issued by the Supreme Court of Western Australia. The plaintiff, [*name of plaintiff*], seeks orders against you including orders that would allow the plaintiff to [*take possession of/foreclose on/sell*][1] your [*description of property*] [*at location of property if relevant*] under a mortgage. **This notice contains important information about your rights. Please read it carefully.**

If you are unsure of what you should do: you should try to get legal advice without delay. Legal Aid WA has an online 'Mortgage stress - self help guide' available on its website at www.legalaid.wa.gov.au or you can telephone the Legal Aid WA InfoLine on 1300 650 579 for free information or a referral to other services that might be able to assist you (open Monday to Friday 8.30 am to 4.30 pm except public holidays). If you need Translating and Interpreting Services contact 131 450, or the National Relay Service (for hearing and speech impaired) contact 133 677.

If you do not agree with the claim and believe that you have a legal defence: you should, within [*number of days as required in Order 5 rule 11*] days after the writ of summons was served on you, inform the Court and [*name of plaintiff*]'s lawyers, [*name of law firm representing plaintiff*] (whose contact details appear below), that you wish to defend the action.

You do not have a legal defence just because you disagree with what the plaintiff is proposing to do or because events have been outside your control. For example, it is not a legal defence that you cannot pay your mortgage repayments because you are

unemployed. Because any defence can only succeed if it is recognised at law it might assist you to get some legal advice.

To inform the Court and [*name of law firm representing plaintiff*] that you wish to defend the action you should:

1. File an original and one copy of a completed Memorandum of Appearance (*Rules of the Supreme Court 1971* Schedule 2 Form 6) at the Supreme Court registry, Level 11, David Malcolm Justice Centre, 28 Barrack Street, Perth. A Memorandum of Appearance form can be obtained from the Supreme Court website at: www.supremecourt.wa.gov.au.

2. Serve on [*name of law firm representing plaintiff*] without delay a copy of the stamped Memorandum of Appearance that is returned to you by the Court (1. above).

If you do nothing: if you do not file a Memorandum of Appearance at the Court within [*number of days as required in Order 5 rule 11*] days after the writ of summons was served on you, then [*name of plaintiff*] may ask the Court to make orders that would allow the plaintiff to [*take possession of/foreclose on/sell*][1] your [*description of property*] [*at location of property if relevant*].

The plaintiff's lawyers: The plaintiff is represented by [*name of law firm representing plaintiff*], whose address is [*street address*]. If you wish to contact someone at [*name of law firm representing plaintiff*] in relation to this matter then you should contact [*lawyer's name*] on [*lawyer's telephone number*] or by email at [*lawyer's email address*].

Note to Form 4:

1. Delete inapplicable.

[Form 4 inserted: Gazette 16 Nov 2016 p. 5200-2.]

5. Indorsements of representative capacity of parties (O. 6 r. 5)

The plaintiff's claim is as executor (*or* administrator) of C.D., deceased, for, etc.

The plaintiff's claim is against the defendant A.B. as executor (*or* etc.) of C.D., deceased, for etc.

The plaintiff's claim is against the defendant A.B. as executor of X.Y., deceased, for, etc. and against the defendant C.D., in his personal capacity, for, etc.

The plaintiff's claim is as trustee under the bankruptcy of A.B. for

The plaintiff's claim is as [*or*, the plaintiff's claim is against the defendant as] trustee under the will of A.B. [*or*, under the settlement upon the marriage of A.B. and X.Y.].

The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety, for

[Form 5 amended: Gazette 30 Jun 2003 p. 2631; 28 Jun 2011 p. 2556.]

5AA. Notice of change of representation, service details or address (O. 8 r. 5A; O. 71A r. 5(2)(aa))

Supreme Court of Western Australia		No:	
		Notice of change of representation, service details or address	
Parties	Plaintiff/Applicant/Appellant[1] Defendant/Respondent[1]		
Party filing notice	Plaintiff/Applicant/Appellant[2] Defendant/Respondent[2] Third Party[2]		
Date of filing			
CURRENT ADDRESS AND SERVICE DETAILS			
Geographical address of party[3]			
Postal address for service of documents[4]			
Telephone number[5]		Fax number[6]	
Email address[6]			
Reference[7]			
CHANGE OF REPRESENTATION - IF APPLICABLE			
Change in representation[8]	❒ I intend to act in person ❒ I have changed lawyers		
Name of new lawyer[9]			
Address where new lawyer conducts business[10]			
New lawyer's postal address[10]			
Signature of party or lawyer	Party/Party's Lawyer		Date:

Form 5AA

Notes to Form No. 5AA —

1. Add full party details.
2. Delete inapplicable. Add other party designation if required.
3. Must be provided unless otherwise ordered by the Court. See Order 71A r. 2 and 3A.
4. Must be provided - to be lawyer's postal address if party is legally represented.
5. Must be provided - to be lawyer's telephone number if party is legally represented.
6. Optional - if provided, may be used for service of documents.
7. Optional.
8. Tick relevant box. If changing lawyers complete new lawyer's contact details below.
9. Must be provided if a new lawyer has been appointed.
10. Must be provided if a new lawyer has been appointed. Write "as above" if the same as the party's postal address for service of documents.

[Form 5AA inserted: Gazette 13 Nov 2015 p. 4651-2.]

5A. Request for service abroad of judicial documents and certificate (O. 11A r. 4, 6 & 16)

Part 1 — Request for service abroad of judicial documents

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague, the 15th of November 1965

Identity and address of the forwarding authority requesting service	Identity and address of receiving authority *[Central Authority/additional authority]*

The undersigned forwarding authority (on the application of [*name and address of applicant on whose behalf forwarding authority requests service*]) has the honour to transmit – in duplicate – the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.:
(identity and address) .....
.....

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of Article 5 of the Convention*.

(b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of Article 5*): .....
.....

(c) by delivery to the addressee, if the addressee accepts it voluntarily (second paragraph of Article 5)*.

The receiving authority *[Central Authority/additional authority]* is requested to return or to have returned to the forwarding authority a copy of the documents – and of the annexes* – with a certificate as provided in Part 2 of this Form on the reverse side.

List of documents
.....
.....

Done at ..... , the .....

Signature or stamp (or both) of forwarding authority.

*Delete if inappropriate.

Part 2 — Certificate

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague, the 15th of November 1965

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention:

1. that the documents listed in Part 1 have been served*

–the (date).....

–at (place, street, number) .....
.....

–in one of the following methods authorised by Article 5:

a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of Article 5 of the Convention*, ...
.....

b) in accordance with the following particular method*: .....
.....

c) by delivery to the addressee, who accepted it voluntarily*.

The document referred to in the request, has been delivered to:

–(identity and description of person).....
.....

–relationship to the addressee (family, business or other.) .....
.....

2. that the document has not been served, by reason of the following facts*:.....
.....
.....

In conformity with the second paragraph of Article 12 of the Convention, the forwarding authority is requested to pay or reimburse the expenses detailed in the attached statement*.

Annexes

Documents returned: .....
.....

Form 5A

In appropriate cases, documents, establishing the service: .....
.....

Done at ..... , the .....

Signature or stamp (or both).

*Delete if inappropriate.

[Form 5A inserted: Gazette 3 Jul 2009 p. 2696-8; (printers correction: Gazette 7 Jul 2009 p. 2719).]

5AB. Notice to defendant served outside Australia (O. 10 r. 8)

To the Defendant:

1. You have been served with an originating process outside Australia under Order 10 Division 3 of the *Rules of the Supreme Court 1971* (WA). A copy of the applicable Division is enclosed for your information. The Division shows the scope of the jurisdiction of the Court in respect of claims against persons who are served outside Australia.

2. The grounds alleged by the plaintiff to support its claim to be entitled to serve you outside Australia are:

   [*specify grounds*]

3. The Court may, on application made by you in accordance with the rules of court, dismiss or stay the proceeding or set aside the service on you of this originating process. Without limiting the Court's powers in this regard, the Court may dismiss or stay the proceeding or set aside the service on you if satisfied that —

   (a) the service was not authorised by the rules of court; or

   (b) this Court is an inappropriate forum for the trial of the proceedings; or

   (c) the claim has insufficient prospects of success to warrant putting you to the time, expense and trouble of defending the claim.

4. Alternatively you may enter an unconditional appearance (in the form prescribed by the rules of court) within the time required under the rules of court.

5. If you enter an unconditional appearance, additional procedural obligations (such as an obligation to file a defence or an affidavit) may apply to you in accordance with the rules of court.

6. If you do not make an application to set aside service referred to in paragraph 3 or enter an unconditional appearance, the Court may give leave to the plaintiff to proceed against you without further notice.

[Form 5AB inserted: SL 2024/38 r. 17.]

5B. Summary of the document to be served (O. 11A r. 4)

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague, the 15th of November 1965 (Article 5, fourth paragraph)

Identity and address of the addressee *[person to be served]*:

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE SUMMARY OF THE DOCUMENT TO BE SERVED WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO: ....

SUMMARY OF THE DOCUMENT TO BE SERVED

Name and address of the forwarding authority.....

Particulars of the parties .....

**JUDICIAL DOCUMENT

Nature and purpose of the document.....

Nature and purpose of the proceedings and, when appropriate, the amount in dispute .....

Date and place for entering appearance.....

Court in which proceedings pending/judgment given .....

**Date of judgment (if applicable) .....

Time limits stated in the document .....

[Form 5B inserted: Gazette 3 Jul 2009 p. 2698-9; amended: SL 2020/242 r. 11.]

Form 5B

[Forms 5C-5F deleted: Gazette 3 Jul 2009 p. 2696.]

6. Memorandum of appearance (O. 12 r. 2(2))

<table>
<tr><td colspan="3">Supreme Court of Western Australia</td><td colspan="3">No:
Memorandum of appearance</td></tr>
<tr><td>Parties</td><td colspan="5">Plaintiff/Applicant[1]
Defendant/Respondent[1]</td></tr>
<tr><td colspan="6">Enter an appearance for the Defendant/Respondent/Third Party[2]:</td></tr>
<tr><td>Date of filing</td><td colspan="5"></td></tr>
<tr><td colspan="6">ADDRESS AND SERVICE DETAILS</td></tr>
<tr><td>Geographical address of party[3]</td><td colspan="5"></td></tr>
<tr><td>Name of lawyer[4]</td><td colspan="5"></td></tr>
<tr><td>Address where lawyer conducts business[4]</td><td colspan="5"></td></tr>
<tr><td>Postal address for service of documents[5]</td><td colspan="5"></td></tr>
<tr><td>Email address[6]</td><td colspan="5"></td></tr>
<tr><td>Telephone number[7]</td><td colspan="2"></td><td>Fax number[6]</td><td colspan="2"></td></tr>
<tr><td>Reference[8]</td><td colspan="5"></td></tr>
<tr><td>Signature of party or lawyer</td><td colspan="3">Party/Party’s Lawyer</td><td colspan="2">Date:</td></tr>
</table>

Notes to Form No. 6 —

1. Add full party details.
2. Delete inapplicable. Add other party designation if required.
3. Must be provided unless otherwise ordered by the Court. See Order 71A r. 2 and 3A.
4. Must be provided if a lawyer has been appointed.
5. Must be provided - to be lawyer’s postal address if party is legally represented.
6. Optional - if provided, may be used for service of documents.

7. Must be provided - to be lawyer's telephone number if party is legally represented.
8. Optional.

[Form 6 inserted: Gazette 13 Nov 2015 p. 4652.]

7. Notice limiting defence (O. 12 r. 10)

(Heading as in action)

Take notice that the [*abovenamed*] defendant A.B. limits his defence to the part only of the property mentioned in the statement of claim, namely, [to the close called "The Big Field"].

Dated the day of 20 .

(Signed)

of Agent for

of

Solicitor for the said
defendant C.D.

(*or*) C.D., defendant in person.

[Form 7 amended: Gazette 28 Jun 2011 p. 2556.]

Form 8

[~~Forms 8 and~~8. Notice of intention to abide (O. 12 r. 11)

Supreme Court of Western Australia	No:	
	Notice of intention to abide	
Parties	Plaintiff/Applicant [1] Defendant/Respondent [1]	
Notice *[Tick one box]*	❒ The defendant/respondent does not intend to take part in the proceedings and will accept any order made by the Court. ❒ The defendant/respondent does not intend to take part in the proceedings and will accept any order made by the Court other than as to costs.	
Name of defendant/ respondent [2]		
Signature of party or lawyer	Party/Party's Lawyer	Date:

Notes to Form 8 —

1. Add full party details.
2. Please state full name if there is more than one respondent/defendant.

[Form 8 inserted: SL 2024/38 r. 18.]

[Form 9 deleted: Gazette 21 Feb 2007 p. 536.]

10. Forms for Order 18

(1) Notice to be indorsed on copy of counterclaim (O. 18 r. 3(5))

To X.Y.

* Insert number of days limited for appearance

Take notice that, if you intend to defend this Counterclaim, an appearance must be entered to the Counterclaim on your behalf within *days after the service of this defence and counterclaim on you, exclusive of the day of service, otherwise judgment may be given against you without further notice.

The person served with this Counterclaim may enter an appearance either personally or by a solicitor at the Central Office of the Supreme Court at Perth.

(2) Memorandum of appearance to counterclaim (O. 18 r. 3)

[*As in No. 6 but substituting for the title of the action the following: —*]

Between

Plaintiff(s)

and

Defendant(s)

(by original action)

And between

the said

Plaintiff(s)

and

the said

Defendant(s)

(by counterclaim)

[*and substituting for the request to enter appearance the following:*]

Enter an appearance for [*full name of defendant to counterclaim wishing to appear*] to the Counterclaim of the abovenamed defendant in this action.

Form 10

(3) Memorandum of appearance of person added as defendant (O. 18 r. 8(3))

[*As in No. 6 but substituting for the title of the action the following:*]

Between

Plaintiff(s)

and

Defendant(s)

And between

Plaintiff(s)

and

Defendant(s)

(by original writ and by order)

[*and substituting for the request to enter appearance the following:* —]

Enter an appearance for [*full name of added defendant*] who has been served with an order dated the day of 20 , making him a defendant to the action.

[Form 10 amended: Gazette 28 Jun 2011 p. 2556-7.]

10A. Consent to be group member in representative proceeding (O. 18A r. 4)

(*Heading as in application commencing the representative proceeding*)

CONSENT TO BE GROUP MEMBER

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Telephone:

Email:

[*Name of person*], of [*address*], a person referred to in the *Civil Procedure (Representative Proceedings) Act 2022* section 8(2), consents to being a group member in this proceeding.

[*Signature of person or person's legal practitioner*]

[Form 10A inserted: SL 2023/16 r. 10.]

Form 10B

10B. Notice for opting out of representative proceeding (O. 18A r. 5)

(*Heading as in application commencing the representative proceeding*)

NOTICE OF GROUP MEMBER OPTING OUT

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Telephone:

Email:

[*Name of group member*], of [*address*], by this notice opts out of this proceeding under the *Civil Procedure (Representative Proceedings) Act 2022* section 12(2).

[*Signature of group member or group member's legal practitioner*]

[Form 10B inserted: SL 2023/16 r. 10.]

11. Third party notice (general form) (O. 19 r. 1)

In the Supreme Court of Western Australia. 20 . No.
Between

A.B., Plaintiff,

and

C.D., Defendant,

and

E.F., Third Party

THIRD PARTY NOTICE

[Issued pursuant to the order of dated the day of]

To E.F. of

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [*here state concisely the nature of the plaintiff's claim*] as appears from the writ of summons [*and statement of claim*] a copy [*copies*] whereof is [*are*] served herewith.

The defendant claims against you [*here state concisely the nature of the claim against the third party, as for instance*] to be indemnified against the plaintiff's claim and the costs of the action, [*or*] contribution to the extent of [*one-half*] of the plaintiff's claim [*or*] the following relief or remedy, namely

on the grounds that [*state concisely the grounds of the claim against the third party*].

* Fix time in accordance with O. 5 R. 11

And take notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, you must cause an appearance to be entered for you within* days after the service of this notice upon you, otherwise you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to [indemnify the defendant, *or* to contribute to the extend claimed, *or* to

(*stating the relief or remedy sought*)] and will be bound by any judgment or decision given in the action, and the judgment may be enforced against you in accordance with Order 19 of the rules of the Supreme Court.

Dated. etc.

(Signed)

Solicitor for the defendant.

Appearance is to be entered at the Central Office, Supreme Court, Perth.

Form 11

[Form 11 amended: Gazette 28 Jun 2011 p. 2557.]

12. Third party notice where question or issue to be determined (O. 19 r. 1)

[*As in Form No. 11 down to "a copy whereof is served herewith" and proceed: —*]

The defendant requires that the following question or issue, viz, [*here state the question or issue required to be determined*] should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

And take notice that if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant you must cause an appearance to be entered for you within* days after the service of this notice on you, otherwise you will be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 19 of the rules of the Supreme Court.

*Fix time in accordance with O. 5 R. 11.

Dated, etc, [*as in Form No. 11*].

[Form 12 amended: Gazette 9 Nov 1973 p. 4165; 28 Jun 2011 p. 2557.]

[Forms 13 and 14 deleted: Gazette 21 Feb 2007 p. 596.]

[Form 15 deleted: Gazette 5 Jun 1992 p. 2282.]

[Form 16 deleted: Gazette 21 Feb 2007 p. 596.]

17. List of documents (O. 26 r. 4(1) & 8)

Supreme Court of Western Australia General Division		No: **List of documents**
Parties	Plaintiff Defendant	
To	[*Party*] and its legal practitioner.	
From	[*Party giving discovery*]	
General	This list is served in compliance with the *Rules of the Supreme Court 1971* Order 26 rule 1(3) [*or* the Court's order dated 20 .]	
Documents in possession (Part 1)	Part 1A of this list lists the documents relating to the matters in question in this action that are in the possession, custody or power of the [*party giving discovery*]. Part 1B of this list lists each of those documents listed in Part 1A that the [*party giving discovery*] objects to producing and the grounds for objecting.	
Documents no longer in possession (Part 2)	Part 2A of this list lists the documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [*party giving discovery*]. Part 2B of this list, for each document listed in Part 2A, states — • the date on which it was last in the [*party giving discovery's*] possession, custody or power; and • what has become of it; and • who currently has possession or custody of or power over it.	
Declarations	The [*party giving discovery*] has made all reasonable enquiries, including of its employees and agents, to identify all documents of any description whatever relating to any matter in question in this action that are or were in its possession, custody or power. Neither the [*party giving discovery*], nor its legal practitioner, nor any other person on its behalf, has now, or ever had, possession or custody of or power over any document of any description whatever relating to any matter in question in this action, other than the documents listed in Parts 1A and 2A of this list.	

Inspection of documents[1]	The documents in this list, other than those listed in Parts 1B and 2A, may be inspected at — [*address*] on [*date and times*].	
Certificate by party giving discovery or its legal practitioner [2]	I certify that the statements in this document are true. [*Party*]/[*Party's legal practitioner*]	Date:
Service details	This list and its attachments were served on [*party*] on [*date*] by [*server*] Signed: Date:	

List of documents — Part 1A[3]

The documents relating to the matters in question in this action that are in the possession, custody or power of the [*party giving discovery*] are as follows —

No.	Description of document
1.	

List of documents — Part 1B[3]

Of the documents listed in Part 1A the [*party giving discovery*] objects to producing the following on the following grounds.

No. in Part 1A	Grounds for objecting to producing the document

List of documents — Part 2A[3]

The documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [*party giving discovery*] are as follows —

No.	Description of document
1.	

Form 17

List of documents — Part 2B[3]			
For each document listed in Part 2A, the following states — • the date on which it was last in the possession, custody or power of the [*party giving discovery*]; and • what has become of it; and • who currently has possession or custody of or power over it.			
No. in Part 2A	Date	What has become of it	Who currently has possession or custody of or power over it
1.			

Notes to Form No. 17 —

1. This notice must comply with O. 26 r. 8.
2. Do not complete this if this list is being verified by an affidavit.
   This certificate may be signed by a person listed in O. 26 r. 4(4) or the legal practitioner of the party giving discovery.
3. This Part must begin on a new sheet of paper and be attached to the main document.

[Form 17 inserted: Gazette 28 Jul 2010 p. 3472-5; amended: SL 2022/74 r. 15.]

18. Affidavit verifying list of documents (O. 26 r. 4(3))

(*Heading as in cause or matter*)

I the abovenamed plaintiff (or defendant) A.B., make oath and say as follows: —

1. The list of documents produced to me and marked "Attachment A" is the list of the documents relating to the matters in question in this action that are or have been in the possession, custody or power of the [*party giving discovery*].
2. The documents listed in Part 1A of Attachment A are the documents relating to the matters in question in this action that are in the possession, custody or power of the [*party giving discovery*].
3. The [*party giving discovery*] objects to producing those of the documents in Part 1A of Attachment A identified in Part 1B on the grounds stated in Part 1B.
4. The documents listed in Part 2A of Attachment A are the documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [*party giving discovery*].
5. The statements in Part 2B of Attachment A about the documents listed in Part 2A are true.
6. The [*party giving discovery*] has made all reasonable enquiries, including of its employees and agents, to identify all documents of any description whatever relating to any matter in question in this action that are or were in its possession, custody or power.
7. To the best of my knowledge, information and belief, neither the [*party giving discovery*], nor its legal practitioner, nor any other person on its behalf, has now, or ever had possession, custody or power over any document of any description whatever relating to any matter in question in this action, other than the documents listed in Parts 1A and 2A of Attachment A.

Sworn, etc.

Filed on behalf of the (plaintiff) (*or* defendant).

[Form 18 amended: Gazette 28 Jul 2010 p. 3475-6; 28 Jun 2011 p. 2557; SL 2022/74 r. 15.]

[Form 18A deleted: Gazette 28 Jul 2010 p. 3468.]

[Forms 19 and 20 deleted: Gazette 16 Aug 2017 p. 4421.]

Form 21

21. Subpoena to give oral evidence (O. 36B r. 3(1))

Supreme Court of Western Australia *General Division/Court of Appeal		No.: **Subpoena to give oral evidence**
Parties[1]		Plaintiff Defendant
To	[*Name and address*]	
Order	**You are ordered to attend the Supreme Court to give oral evidence.** See details below. **Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.** Please read Notes 1 to 8 at the end of this subpoena.	
Last date for service [see Note 1]	The last date for service of this subpoena is [*date*].	
Issuing details	Issued at the request of: [*Name of party*] Address for service: [*see Order 71A rule 3*] Email:	
	Date of issue:	[*Seal or stamp of the Court*]
Details of subpoena	Date, time and place at which you must attend to give oral evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted — Date: Time: Place: You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.	
Notes		
Last day for service	1. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.	
Informal service	2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.	
Addressee a corporation	3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.	
Conduct money	4. You need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.	

Applications in relation to subpoena	5. You have the right to apply to the Court for an order setting aside this subpoena or for other relief in respect of it.
Loss or expense of compliance	6. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with this subpoena.
Contempt of court—arrest	7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly. 8. Note 7 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Footnotes to Form 21 —

* Delete the inapplicable.

1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

[Form 21 inserted: Gazette 24 May 2017 p. 2577-8.]

21A. Subpoena to produce documents (O. 36B r. 3(1))

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Subpoena to produce documents**	
Parties[1]	Plaintiff Defendant	
To	[*Name and address*]	
Order	**You are ordered to attend the Supreme Court and produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents.** See details below. **Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.** Please read Notes 1 to 12 at the end of this subpoena.	
Last date for service [see Note 1]	The last date for service of this subpoena is [*date*].	
Issuing details	Issued at the request of: [*Name of party*] Address for service: [*see Order 71A rule 3*] Email:	
	Date of issue:	[*Seal or stamp of the Court*]

Form 21A

Details of subpoena	You must comply with this subpoena — (a) by attending the Court and producing this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified below; or (b) by delivering or posting this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to the Court at the address below, so that they are received not less than 2 clear days before the date specified below. (*See Notes 5-8*) Date, time and place at which you must attend and produce this subpoena or a copy of it and the documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted — Date: Time: Place: Address to which this subpoena (or copy) and documents or things may be delivered or posted: * Supreme Court of Western Australia David Malcolm Justice Centre Level 11, 28 Barrack Street Perth WA 6000 * Supreme Court of Western Australia Court of Appeal Office Stirling Gardens, Barrack Street Perth WA 6000
Schedule of documents	
The documents and things you must produce are as follows: [*List the documents or things and state whether the original of any document is required. If insufficient space, attach list.*]	
Notes	
Last day for service	1. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.
Informal service	2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	3. If this subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money	4. You need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.
Production of subpoena or copy of it and documents or things by delivery or post	5. Instead of attending the Court and producing this subpoena (or a copy of it) and the documents or things, you may comply with this subpoena by delivering or posting the subpoena (or a copy of it) and the documents or things to the Court at the address specified in the subpoena so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date or time from the issuing party, before the later date or time.
Production of a number of documents or things	6. If you produce more than one document or thing, you must include with them a list of them.
Production of copy instead of original	7. Unless the Schedule of documents says the original of a document listed in the Schedule is required, you may produce a copy of it instead. 8. The copy of a document may be — (a) a photocopy; or (b) in an electronic form on a CD-ROM, DVD or USB device in any of the following electronic formats — .doc and .docx – Microsoft Word documents .pdf – Adobe Acrobat documents .xls and .xlsx – Microsoft Excel spreadsheets .jpg – image files .rtf – rich text format .gif – graphics interchange format .tif – tagged image format
Applications in relation to subpoena	9. You have the right to apply (before or after complying with this subpoena) to the Court for an order — (a) setting aside this subpoena (or a part of it); (b) giving directions in relation to removing from and returning to the Court, and the inspection, copying and disposal, of any document or thing that you produce or are required to produce by this subpoena; (c) giving other relief in respect of it. Unless the Court has made such an order, a registrar may permit the parties to the proceeding to inspect, copy, or remove and return any document or thing you produce under this subpoena.

Loss or expense of compliance	10. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with this subpoena.
Contempt of court—arrest	11. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly. 12. Note 11 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Footnotes to Form 21A —

* Delete the inapplicable.

1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

[Form 21A inserted: Gazette 24 May 2017 p. 2578-81.]

21B. Subpoena to give oral evidence and produce documents (O. 36B r. 3(1))

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Subpoena to give oral evidence and produce documents**	
Parties[1]	Plaintiff Defendant	
To	[*Name and address*]	
Order	**You are ordered to attend the Supreme Court to give oral evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents.** See details below. **Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.** Please read Notes 1 to 12 at the end of this subpoena.	
Last date for service [see Note 1]	The last date for service of this subpoena is [*date*].	
Issuing details	Issued at the request of: [*Name of party*] Address for service: [*see Order 71A rule 3*] Email:	
	Date of issue:	[*Seal or stamp of the Court*]

Form 21B

Details of subpoena	In so far as this subpoena requires you to attend to give oral evidence, you must attend as follows, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted — Date: Time: Place: You must continue to attend from day-to-day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed. Insofar as this subpoena requires you to attend to produce the subpoena or a copy of it and documents or things, you must comply with that requirement — (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or (b) by delivering or posting this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to the Court at the address below so that they are received not less than 2 clear days before the date specified for attendance and production. (*See Notes 5–8*) Date, time and place at which you must attend to produce the subpoena or a copy of it and the documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted — Date: Time: Place: Address to which this subpoena (or copy) and documents or things may be delivered: * Supreme Court of Western Australia David Malcolm Justice Centre Level 11, 28 Barrack Street Perth WA 6000 * Supreme Court of Western Australia Court of Appeal Office Stirling Gardens, Barrack Street Perth WA 6000

Form 21B

Schedule of documents	
The documents and things you must produce are as follows: *[List the documents or things and whether the original of any document is required. If insufficient space, attach list.]*	
Notes	
Last day for service	1. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.
Informal service	2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.
Conduct money	4. You need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.
Production of subpoena or copy of it and documents or things by delivery or post	5. Insofar as this subpoena requires you to attend and produce the subpoena (or a copy of it) and documents or things, you may, instead of attending, comply with that requirement by delivering or posting the subpoena (or a copy of it) and the documents or things to the Court at the address specified in the subpoena so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date or time from the issuing party, before the later date or time.
Production of a number of documents or things	6. If you produce more than one document or thing, you must include with them a list of them.
Production of copy instead of original	7. Unless the Schedule of documents says the original of a document listed in the Schedule is required, you may produce a copy of it instead. 8. The copy of a document may be — (a) a photocopy; or (b) in an electronic form on a CD-ROM, DVD or USB device in any of the following electronic formats — .doc and .docx – Microsoft Word documents .pdf – Adobe Acrobat documents .xls and .xlsx – Microsoft Excel spreadsheets .jpg – image files .rtf – rich text format

	.gif – graphics interchange format .tif – tagged image format
Applications in relation to subpoena	9. You have the right to apply (before or after complying with this subpoena) to the Court for an order — (a) setting aside this subpoena (or a part of it); (b) giving directions in relation to removing from and returning to the Court, and the inspection, copying and disposal, of any document or thing that you produce or are required to produce by this subpoena; (c) giving other relief in respect of it. Unless the Court has made such an order, a registrar may permit the parties to the proceeding to inspect, copy, or remove and return any document or thing you produce under this subpoena.
Loss or expense of compliance	10. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with this subpoena.
Contempt of court—arrest	11. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly. 12. Note 11 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Footnotes to Form 21B —

* Delete the inapplicable.

1. If there is more than 1 of any party, include the additional parties' names and types of party in a schedule to the subpoena.

[Form 21B inserted: Gazette 24 May 2017 p. 2582-5.]

[Form 22 deleted: Gazette 24 May 2017 p. 2585.]

Form 22A

22A. Subpoena notice and declaration (O. 36B r. 10(3))

Supreme Court of Western Australia General Division/Court of Appeal	No: **Subpoena notice and declaration**

Parties	Plaintiff Defendant

Notice to addressee

The ***addressee*** is the person to whom the subpoena is addressed, and who will be the recipient of the subpoena.

You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be —

(a) a photocopy; or

(b) in an electronic form on a CD-ROM, DVD or USB device in any of the following electronic formats —

.doc and .docx – Microsoft Word documents
.pdf – Adobe Acrobat documents
.xls and .xlsx – Microsoft Excel spreadsheets
.jpg – image files
.rtf – rich text format
.gif – graphics interchange format
.tif – tagged image format

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

If you declare that all of the materials you produce are copies the registrar may destroy the copies when they are no longer required by the Court.

If you declare that the material you produce includes any original document the registrar may, when the material is no longer required by the Court, return all of the material to you at the address specified by you in the Declaration below.

Declaration by addressee (subpoena recipient)

[*Tick the relevant option below, (provide your address as appropriate), sign and date*]

❒ **All** of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court may destroy the copies once they are no longer required, without further notice to me.

❒ **Some or all** of the material I am providing to the Court in compliance with the attached subpoena is an **original** document. Once the material is no longer required, all of the material may be returned to me at the following address — .... [*Signature of addressee*] ..... [*Name of addressee*] ..... [*Date*]

[Form 22A inserted: Gazette 28 Jul 2010 p. 3480-1; amended: Gazette 24 May 2017 p. 2586; 16 Aug 2017 p. 4421.]

[Form 22B deleted: Gazette 21 Feb 2007 p. 546.]

23. Subpoena to give evidence to WA Supreme Court (to be served in NZ) (O. 39A r. 2A)

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Notice attached to subpoena to give evidence to the Supreme Court of Western Australia (to be served in New Zealand)**
Parties[1]	Plaintiff Defendant
Notice to witness	*Trans-Tasman Proceedings Act 2010* (Commonwealth) **This notice is very important.** **Please read it and the attached document or documents very carefully.** **If you have any trouble understanding these documents you should get legal advice as soon as possible.** Attached to this notice is a subpoena requiring you to attend to give evidence to the Supreme Court of Western Australia. The subpoena has been issued by that court. The subpoena may be served in New Zealand under New Zealand law (see *Evidence Act 2006* (New Zealand) section 163). This notice —

	• sets out your rights relating to the subpoena; and • sets out your obligations relating to the subpoena; and • includes information about the way in which you may make an application to have the subpoena set aside.
Your rights	1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena. 2. An amount of money, or money and vouchers, that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: '**Your obligations**'). 3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the Supreme Court that you be paid the additional amount you incurred. 4. You may apply to the Supreme Court to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible. 5. An application can be made and determined without you having to go to Australia, or to retain Australian lawyers. All the necessary arrangements can be made in New Zealand. **Note:** Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.
Your obligations	6. Unless the subpoena is set aside, you must comply with it if — (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either — (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses; and (b) you were given with the subpoena a copy of an order by a judge of the Supreme Court giving leave to serve the subpoena in New Zealand; and (c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and (d) service of the subpoena complied with any other conditions specified in the order; and (e) you are over the age of 18 years.

Failure to comply with subpoena	7. If you do not comply with the subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ$10 000 may be imposed.
Grounds for setting aside a subpoena	8. The Supreme Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and — (a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or (b) if you complied with the subpoena — you would be liable to be detained for the purpose of serving a sentence; or (c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or (d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the *Competition and Consumer Act 2010* (Commonwealth)); or (e) you are subject to a restriction on your movements imposed by law or an order of a court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence). 9. The grounds on which the Supreme Court may set aside the subpoena include — (a) the evidence you would give in the proceedings can be obtained satisfactorily by other means without significantly greater expense; (b) compliance with the subpoena would cause you hardship or serious inconvenience. **Note:** The above list does not include all the matters the Court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.
Procedure for applying to set aside a subpoena	10. Application must be made to the Supreme Court of Western Australia. 11. You may fax your application to that Court on fax number [*fax number of the court*]. 12. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, faxed or posted to you at that address. 13. A registrar of the Supreme Court will arrange for service of your application and of any affidavit you file with your application.

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	14. The Supreme Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing. 15. If there is a hearing, the Supreme Court can direct that it be held by video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone from a place in New Zealand. 16. If, in your application or within a reasonable time after filing your application, you request that the hearing be held by video link or telephone, the Supreme Court must hold a hearing by video link or telephone. However, in such a case, the Court will determine which of video link or telephone will be used.

Supreme Court of Western Australia *General Division/Court of Appeal	No.:	
	Subpoena to give evidence to the Supreme Court of Western Australia (to be served in New Zealand)	
Parties[1]	Plaintiff Defendant	
To	[*Name and address*]	
Order	**You are ordered to attend the Supreme Court of Western Australia to give evidence.** See details below. **Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest and the imposition of a fine under the *Evidence Act 2006* (New Zealand) section 165.** Please read Notes 1 to 7 at the end of this subpoena.	
Last date for service [see Note 2]	The last date for service of this subpoena is [*date*].	
Issuing details	Issued at the request of: [*Name of party*] Address for service: [*see Order 71A rule 3*] Email:	
	Date of issue:	[*Seal or stamp of the Court*]

Details of subpoena	Date, time and place at which you must attend the Supreme Court of Western Australia to give evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted — Date: Time: Place: You must continue to attend from day-to-day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.
Notes	
Leave to serve subpoena	1. You need not comply with this subpoena unless it is accompanied by — (a) a copy of the order of a judge of the Supreme Court giving leave to serve the subpoena in New Zealand; and (b) a notice in the prescribed form that — (i) sets out your rights and obligations in relation to the subpoena; and (ii) includes information about the way in which an application to have the subpoena set aside may be made.
Last day for service	2. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.
Informal service	3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	4. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.
Loss or expense of compliance	5. If you are not a party to the proceeding, you may apply to the Supreme Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.
Contempt of court—arrest	6. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under the *Evidence Act 2006* (New Zealand) section 165. 7. Note 6 is without prejudice to any other power to enforce compliance with a subpoena.

Footnotes to Form 23 —

* Delete the inapplicable.

Form 23A

1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

[Form 23 inserted: Gazette 24 May 2017 p. 2586-91; amended: Gazette 27 Feb 2018 p. 622.]

23A. Subpoena to produce documents to WA Supreme Court (to be served in NZ) (O. 39A r. 2A)

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Notice attached to subpoena to produce documents to the Supreme Court of Western Australia (to be served in New Zealand)**
Parties[1]	Plaintiff Defendant
Notice to witness	*Trans-Tasman Proceedings Act 2010* (Commonwealth) **This notice is very important.** **Please read it and the attached document or documents very carefully.** **If you have any trouble understanding these documents you should get legal advice as soon as possible.** Attached to this notice is a subpoena requiring you to produce documents to the Supreme Court of Western Australia. The subpoena has been issued by that court. The subpoena may be served in New Zealand under New Zealand law (see *Evidence Act 2006* (New Zealand) section 163). This notice — • sets out your rights relating to the subpoena; and • sets out your obligations relating to the subpoena; and • includes information about the way in which you may make an application to have the subpoena set aside.
Your rights	1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena. 2. An amount of money, or money and vouchers, that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: '**Your obligations**'). 3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the Supreme Court of Western Australia that you be paid the additional amount you incurred.

	4. You may apply to the Supreme Court to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible. 5. An application can be made and determined without you having to go to Australia, or to retain Australian lawyers. All the necessary arrangements can be made in New Zealand. **Note:** Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.
Your obligations	6. Unless the subpoena is set aside, you must comply with it if — (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either — (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses; and (b) you were given with the subpoena a copy of an order by a judge of the Supreme Court giving leave to serve the subpoena in New Zealand; and (c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and (d) service of the subpoena complied with any other conditions specified in the order; and (e) you are over the age of 18 years. 7. The subpoena must specify the date on which you must attend the Supreme Court and produce the documents or things. But instead of attending you may comply with the subpoena by delivering or posting the subpoena (or a copy of it) and the documents or things to either — (a) the Supreme Court so that they are received not less than 2 clear days before that date; or (b) the High Court of New Zealand so that they are received at least 10 days before that date. If you deliver or post them to the High Court of New Zealand you will be required to pay the cost of sending them to the Supreme Court. You will be able to pay that cost out of the money given to you to meet your reasonable expenses of complying with the subpoena.

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Failure to comply with subpoena	8. If you do not comply with this subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ$10 000 may be imposed.
Grounds for setting aside a subpoena	9. The Supreme Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and — (a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or (b) if you complied with the subpoena — you would be liable to be detained for the purpose of serving a sentence; or (c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or (d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the *Competition and Consumer Act 2010* (Commonwealth)); or (e) you are subject to a restriction on your movements imposed by law or an order of a court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence). 10. The grounds on which the Supreme Court may set aside the subpoena include — (a) compliance with the subpoena would cause you hardship or serious inconvenience; (b) that, in respect of a document or thing that the subpoena requires you to produce — (i) the document or thing should not be taken out of New Zealand; and (ii) satisfactory evidence of the contents of the document or satisfactory evidence of the thing can be given by other means. **Note:** The above list does not include all the matters the Court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.
Procedure for applying to set aside a subpoena	11. Application must be made to the Supreme Court of Western Australia. 12. You may fax your application to that Court on fax number [*fax number of the Court*]. 13. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, faxed or posted to you at that address.

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	14. A registrar of the Supreme Court will arrange for service of your application and of any affidavit you file with your application. 15. The Supreme Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing. 16. If there is a hearing, the Supreme Court can direct that it be held by video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone from a place in New Zealand. 17. If, in your application or within a reasonable time after filing your application, you request that the hearing be held by video link or telephone, the Supreme Court must hold a hearing by video link or telephone. However, in such a case, the Court will determine which of video link or telephone will be used.

Supreme Court of Western Australia *General Division/Court of Appeal		No.: **Subpoena to produce documents to the Supreme Court of Western Australia (to be served in New Zealand)**
Parties[1]	Plaintiff Defendant	
To	[*Name and address*]	
Order	**You are ordered to attend the Supreme Court of Western Australia and produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents.** See details below. **Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest and the imposition of a fine under the *Evidence Act 2006* (New Zealand) section 165.** Please read Notes 1 to 16 at the end of this subpoena.	
Last date for service [see Note 2]	The last date for service of this subpoena is [*date*].	
Issuing details	Issued at the request of: [*Name of party*] Address for service: [*see Order 71A rule 3*] Email:	
	Date of issue:	[*Seal or stamp of the Court*]
Details of subpoena [See Notes 5–13]	You must comply with this subpoena — (a) by attending the Supreme Court and producing this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or	

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	(b) by delivering or posting this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to — (i) the Supreme Court at the address specified below so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production; or (ii) the Registrar of the High Court of New Zealand at the address specified below, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production. Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things — Date: Time: Place: Address to which the subpoena (or copy) and documents or things may be delivered: * Supreme Court of Western Australia David Malcolm Justice Centre Level 11, 28 Barrack Street Perth WA 6000 * Supreme Court of Western Australia Court of Appeal Stirling Gardens, Barrack Street Perth WA 6000 Address(es) of the High Court of New Zealand to which the subpoena (or copy) and documents or things may be delivered or posted: [*Address(es)*]

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Schedule of documents	
The documents and things you must produce are as follows: [*List the documents or things and whether the original of any document is required. If insufficient space, attach list.*]	
Notes	
Leave to serve subpoena	1. You need not comply with this subpoena unless it is accompanied by — (a) a copy of the order of a judge of the Supreme Court giving leave to serve the subpoena in New Zealand; and (b) a notice in the prescribed form that — (i) sets out your rights and obligations in relation to the subpoena; and (ii) includes information about the way in which an application to have the subpoena set aside may be made.
Last day for service	2. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.
Informal service	3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	4. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.
Production of subpoena or copy of it and documents or things by delivery or post	5. Instead of attending the Supreme Court and producing this subpoena or a copy of it and the document or thing, you may comply with this subpoena by delivering or posting the subpoena or a copy of it and the document or thing to — (a) the Supreme Court at the address specified in the subpoena, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production; or (b) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production. 6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, include a written notice to the Supreme Court of your objection and of the grounds of your objection.

	7. Unless the Supreme Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a registrar of the Supreme Court may permit the parties to the proceeding to inspect the document or thing.
Production of a number of documents or things	8. If you produce more than one document or thing, you must include with them a list of them.
Production of copy instead of original	9. Unless the Schedule of documents says the original of a document listed in the Schedule is required, you may produce a copy of it instead. 10. The copy of a document may be — (a) a photocopy; or (b) in an electronic form on a CD-ROM, DVD or USB device in any of the following electronic formats — .doc and .docx – Microsoft Word documents .pdf – Adobe Acrobat documents .xls and .xlsx – Microsoft Excel spreadsheets .jpg – image files .rtf – rich text format .gif – graphics interchange format .tif – tagged image format
Return or destruction of documents or copies	11. You may, at the time of production, include a written notice to the Supreme Court that any document or copy of a document produced need not be returned and may be destroyed. 12. If you have so informed the Court, a registrar of the Supreme Court may destroy the document or copy instead of returning it to you.
Applications in relation to subpoena	13. You have the right to apply to the Supreme Court for an order with respect to any claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of this subpoena.
Loss or expense of compliance	14. If you are not a party to the proceeding, you may apply to the Supreme Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.
Contempt of court—arrest	15. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under the *Evidence Act 2006* (New Zealand) section 165. 16. Note 15 is without prejudice to any other power to enforce compliance with a subpoena.

Footnotes to Form 23A —

* Delete the inapplicable.

1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

[Form 23A inserted: Gazette 24 May 2017 p. 2591-8; amended: Gazette 27 Feb 2018 p. 622.]

23B. Subpoena to give evidence and produce documents to WA Supreme Court (to be served in NZ) (O. 39A r. 2A)

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Notice attached to subpoena to give evidence and produce documents to the Supreme Court of Western Australia (to be served in New Zealand)**

Parties[1]	Plaintiff Defendant
Notice to witness	*Trans-Tasman Proceedings Act 2010* (Commonwealth) **This notice is very important.** **Please read it and the attached document or documents very carefully.** **If you have any trouble understanding these documents you should get legal advice as soon as possible.** Attached to this notice is a subpoena requiring you to attend the Supreme Court of Western Australia to give evidence and produce documents. The subpoena has been issued by that court. The subpoena may be served in New Zealand under New Zealand law (see *Evidence Act 2006* (New Zealand) section 163). This notice — • sets out your rights relating to the subpoena; and • sets out your obligations relating to the subpoena; and • includes information about the way in which you may make an application to have the subpoena set aside.
Your rights	1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena. 2. An amount of money, or money and vouchers, that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: '**Your obligations**'). 3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the Supreme Court that you be paid the additional amount you incurred.

	4. You may apply to the Supreme Court to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible. 5. An application can be made and determined by the Supreme Court without you having to go to Australia, or to retain Australian lawyers. All the necessary arrangements can be made in New Zealand. **Note:** Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.
Your obligations	6. Unless the subpoena is set aside, you must comply with the attached subpoena if — (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either — (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses; and (b) you were given with the subpoena a copy of an order by a judge of the Supreme Court giving leave to serve the subpoena in New Zealand; and (c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and (d) service of the subpoena complied with any other conditions specified in the order; and (e) you are over the age of 18 years. 7. In so far as the subpoena requires you to produce documents or things to the Supreme Court, it must specify the date on which you must attend the Court and produce the documents or things. But instead of attending you may comply with that requirement by delivering or posting the subpoena (or a copy of it) and the documents or things to either — (a) the Supreme Court so that they are received not less than 2 clear days before that date; or (b) the High Court of New Zealand so that they are received at least 10 days before that date. If you deliver or post them to the High Court of New Zealand you will be required to pay the cost of sending them to the Supreme Court. You will be able to pay that cost out of the money given to

	you to meet your reasonable expenses of complying with the subpoena.
Failure to comply with subpoena	8. If you do not comply with this subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ$10 000 may be imposed.
Grounds for setting aside a subpoena	9. The Supreme Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and — (a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or (b) if you complied with the subpoena — you would be liable to be detained for the purpose of serving a sentence; or (c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or (d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the *Competition and Consumer Act 2010* (Commonwealth)); or (e) you are subject to a restriction on your movements imposed by law or an order of a court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence). 10. The grounds on which the Supreme Court may set aside the subpoena include — (a) the evidence you would give in the proceedings can be obtained satisfactorily by other means without significantly greater expense; (b) compliance with the subpoena would cause you hardship or serious inconvenience; (c) insofar as the subpoena requires you to produce a document or thing, that — (i) the document or thing should not be taken out of New Zealand; and (ii) satisfactory evidence of the contents of the document or satisfactory evidence of the thing can be given by other means. **Note:** The above list does not include all the matters the Court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.
Procedure for applying to set	11. Application must be made to the Supreme Court of Western Australia.

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aside a subpoena	12. You may fax your application to that court on fax number [*fax number of the court*]. 13. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, faxed or posted to you at that address. 14. A registrar of the Supreme Court will arrange for service of your application and of any affidavit you file with your application. 15. The Supreme Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing. 16. If there is a hearing, the Supreme Court can direct that it be held by video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone from a place in New Zealand. 17. If, in your application or within a reasonable time after filing your application, you request that the hearing be held by video link or telephone, the Supreme Court must hold a hearing by video link or telephone. However, in such a case, the Court will determine which of video link or telephone will be used.

Supreme Court of Western Australia *General Division/Court of Appeal	No.:
	Subpoena to give evidence and produce documents to the Supreme Court of Western Australia (to be served in New Zealand)
Parties[1]	Plaintiff Defendant
To	[*Name and address*]
Order	**You are ordered to attend the Supreme Court of Western Australia to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents.** See details below. **Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest and the imposition of a fine under the *Evidence Act 2006* (New Zealand) section 165.** Please read Notes 1 to 16 at the end of this subpoena.
Last date for service [see Note 2]	The last date for service of this subpoena is [*date*].
Issuing details	Issued at the request of: [*Name of party*] Address for service: [*see Order 71A rule 3*] Email:

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	Date of issue:	[*Seal or stamp of the Court*]
Details of subpoena to give evidence	Insofar as this subpoena requires you to attend the Supreme Court of Western Australia to give evidence, you must attend as follows, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted — Date: Time: Place: You must continue to attend from day-to-day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.	
Details of subpoena to produce documents [See Notes 5–13]	Insofar as this subpoena requires you to attend the Supreme Court of Western Australia to produce the subpoena or a copy of it and documents or things, you must comply with that requirement — (a) by attending at the Supreme Court to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified below for attendance and production; or (b) by delivering or posting this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to — (i) the Supreme Court at the address specified below so that they are received not less than 2 clear days before the date specified below for attendance and production; or (ii) the Registrar of the High Court of New Zealand at the address specified below, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified below for attendance and production. Date, time and place at which you must attend and produce the subpoena or a copy of it and documents or things — Date: Time: Place: Address of the Supreme Court to which the subpoena (or copy) and documents or things may be delivered or posted: * Supreme Court of Western Australia David Malcolm Justice Centre Level 11, 28 Barrack Street Perth WA 6000 * Supreme Court of Western Australia Court of Appeal	

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	Stirling Gardens, Barrack Street Perth WA 6000 Address(es) of the High Court of New Zealand to which the subpoena (or copy) and documents or things may be delivered or posted: [*Address(es)*]
Schedule of documents	
The documents and things you must produce are as follows — [*List the documents or things and whether the original of any document is required. If insufficient space, attach list.*]	
Notes	
Leave to serve subpoena	1. You need not comply with this subpoena unless it is accompanied by — (a) a copy of the order of a judge of the Supreme Court giving leave to serve the subpoena in New Zealand; and (b) a notice in the prescribed form that — (i) sets out your rights and obligations in relation to the subpoena; and (ii) includes information about the way in which an application to have the subpoena set aside may be made.
Last day for service	2. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of this subpoena.
Informal service	3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	4. If this subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Production of subpoena or copy of it and documents or things by delivery or post	5. Insofar as this subpoena requires you to attend and produce this subpoena or a copy of it and a document or thing, you may, instead of attending to produce the subpoena or a copy of it and the document or thing, comply with that requirement by delivering or posting the subpoena or a copy of it and the document or thing to — (a) the Supreme Court at the address specified in the subpoena so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production; or (b) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production. 6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, include a written notice to the Supreme Court of your objection and of the grounds of your objection. 7. Unless the Supreme Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a registrar of the Supreme Court may permit the parties to the proceeding to inspect the document or thing.
Production of a number of documents or things	8. If you produce more than one document or thing, you must include with them a list of them.
Production of copy instead of original	9. Unless the Schedule of documents says the original of a document listed in the Schedule is required, you may produce a copy of it instead. 10. The copy of a document may be: (a) a photocopy; or (b) in an electronic form on a CD-ROM, DVD or USB device in any of the following electronic formats — .doc and .docx – Microsoft Word documents .pdf – Adobe Acrobat documents .xls and .xlsx – Microsoft Excel spreadsheets .jpg – image files .rtf – rich text format .gif – graphics interchange format .tif – tagged image format

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Return or destruction of documents or copies	11. You may, at the time of production, include a written notice to the Supreme Court that any document or copy of a document produced need not be returned and may be destroyed. 12. If you have so notified the Court, a registrar of the Supreme Court may destroy the document or copy instead of returning it to you.
Applications in relation to subpoena	13. You have the right to apply to the Supreme Court for an order with respect to any claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of this subpoena.
Loss or expense of compliance	14. If you are not a party to the proceeding, you may apply to the Supreme Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with this subpoena.
Contempt of court—arrest	15. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under the *Evidence Act 2006* (New Zealand) section 165. 16. Note 15 is without prejudice to any other power to enforce compliance with a subpoena.

Footnotes to Form 23B —

* Delete the inapplicable.

1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

[Form 23B inserted: Gazette 24 May 2017 p. 2599-606; amended: Gazette 27 Feb 2018 p. 622-3.]

[Form 24 deleted: Gazette 21 Feb 2007 p. 546.]

25. Order for examination of witness before trial (O. 38 r. 1)

(*Heading as in cause or matter*)

Before
in chambers.

On hearing [the solicitors on both sides] and on reading the affidavit of filed herein the day of 20 ,

It is ordered that E.F. of a witness on behalf of the be examined *viva voce* (on oath or affirmation) before a master [*or* before esquire, special examiner, *or* an examiner to be agreed upon], the plaintiff's [*or* defendant's] solicitor giving to the defendant's [*or* plaintiff's] solicitor days notice in writing of the time and place where the examination is to take place.

And it is further ordered that the depositions taken at the examination be filed, and that copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor of the party using the same, as to his belief, and that the costs of this application [and of the examination] be [costs in the cause, *or as the case may be*].

Dated the day of 20 .

[Form 25 amended: Gazette 9 Nov 1973 p. 4165; 30 Nov 1984 p. 3954; 28 Jun 2011 p. 2558; 27 Feb 2018 p. 623.]

26. *Evidence Act 1906* s. 110 or 111, order under (O. 38A r. 5)

[HEADING]

On the application of ....., and after reading the affidavit of ..... dated ..... and hearing .....,

IT IS ORDERED THAT —

1. AB ("the examiner") is hereby appointed to examine CD ("the witness") on oath or affirmation.

-or-

1. A commission shall be issued to AB ("the examiner") for the examination of CD ("the witness") on oath or affirmation.

2. The examination shall take place on (date) at (time) at (place outside the State) or at such other time and place as the examiner may appoint and where the examiner does appoint another time or place, notice thereof must be given to the witness and to the parties to these proceedings not less than ..... days before the appointed time.

3. The examiner may invite but must not exercise any powers to compel the witness to attend and to produce documents.

4. The examination must be in the following manner —

   (set out the manner of the examination either specifically or by reference to the rules)

5. The examiner shall —
   (a) put the evidence of the witness into writing; and
   (b) appropriately mark for identification any document produced by the witness; and
   (c) certify the written evidence as being the evidence of the witness; and
   (d) send the written evidence and any document produced by registered or certified post to —

   Principal Registrar
   Supreme Court of Western Australia
   PERTH
   Western Australia 6000

6. When the Principal Registrar receives them, any party to these proceedings shall be at liberty to read the written evidence of the witness and any document produced, except where the Court otherwise orders.

7. The trial of these proceedings shall be stayed or adjourned until the Principal Registrar receives the written evidence of the witness and any document produced.

8. The costs of and incidental to the application for this order and to the examination shall be costs in the cause.

-or-

1. A letter of request shall be issued to (name of judicial authority in a place outside the State) to take, or to cause to be taken, the evidence of CD ("the witness").

2. When the Principal Registrar receives them, any party to these proceedings shall be at liberty to read the written evidence of the witness and any document produced, except where the Court otherwise orders.

3. The trial of these proceedings shall be stayed or adjourned until the Principal Registrar receives the written evidence of the witness and any document produced.

4. The costs of and incidental to the application for this order and to the issue of the letter of request shall be costs in the cause.

Dated: BY THE COURT

[L.S.] Registrar.

[Form 26 inserted: Gazette 8 Feb 1991 p. 584-5; amended: Gazette 28 Jun 2011 p. 2558.]

[Form 27 deleted: Gazette 8 Feb 1991 p. 585.]

28. Letter of request (O. 38A r. 3(4))

TO: (name of judicial authority in place outside the State)

I, ... Principal Registrar of the Supreme Court of Western Australia, respectfully request your assistance/the assistance of your court with regard to the following matters.

1. There are before the Supreme Court of Western Australia/before (name of inferior court in W.A.) civil/criminal proceedings entitled as follows —

   (set out full title and action no.) between — (name parties, their descriptions — plaintiff etc. — and their addresses).

2. The names and addresses of the representatives or agents of the parties are as follows —

   (set out names and addresses.)

3. The proceedings concern —

   (set out —

   (a) the nature of the proceedings; and

   (b) the relief sought (if applicable); and

   (c) a summary of the facts.)

4. The Supreme Court has decided, in the interests of justice, to request you to take, or to cause to be taken, the evidence of a person resident in your jurisdiction. Accordingly, I request you to take, or to cause to be taken, the evidence of (name and address of the person or persons) who is/are resident in your jurisdiction.

5. I respectfully request that the evidence be taken in the following manner —

   (set out matters relating to the taking of that evidence — see *Evidence Act 1906*, s. 110(4). Include references, if appropriate, to lists of questions, to detail of evidence sought, or to documents required to be produced.)

6. I request you to inform me or the representatives or agents of the parties of the date when and the place where the evidence is to be taken.

7. Finally, I request that —

   (a) the evidence of the person(s) mentioned in paragraph 4 above me put into writing; and

   (b) any document produced by the person(s) be appropriately marked for identification; and

(c) the written evidence and any document produced be authenticated with the seal of your court or in such other way as is in accordance with your procedure; and

(d) you send the written evidence and any document produced to me by registered or certified post at the following address —

Principal Registrar
Supreme Court of Western Australia
PERTH
Western Australia 6000

Dated:

[L.S.] Principal Registrar

[Form 28 inserted: Gazette 8 Feb 1991 p. 585; amended: Gazette 28 Jun 2011 p. 2558.]

29. Undertaking as to costs of letter of request (O. 38A r. 5)

(*Heading as in cause or matter*)

I [*or we*] hereby undertake to be responsible for all expenses incurred by the Attorney General for the State of Western Australia in respect of the letter of request issued herein on the , and on receiving due notification of the amount of such expenses undertake to pay the same to the Attorney General. The following have been appointed as agents for the parties in connection with the execution of the above letter of request: —

, Plaintiff's agent, of

, Defendant's agent, of

Dated the day of , 20 .

Solicitor for

[Form 29 amended: Gazette 19 Apr 2005 p. 1300; 28 Jun 2011 p. 2558.]

Form 30

30. *Evidence Act 1906* s. 117, order under (O. 39 r. 3)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No ..... of 20 .....

IN THE MATTER of the *Evidence Act 1906*, s. 117, and a (civil/commercial/criminal) proceeding now pending before (requesting court) intituled as follows —

BETWEEN:

AB

Plaintiff,

-and-

CD

Defendant.

ORDER FOR OBTAINING EVIDENCE

[HERE SET OUT FORMALITIES REQUIRED BY PRACTICE DIRECTIONS]

On the application of ..... and after reading the affidavit (if any) of ..... dated ..... and the request of (requesting court), and hearing .....and being satisfied —

(a) that the application is made in pursuance of a request by (the requesting court) exercising jurisdiction in (place outside W.A.); and

(b) that the evidence to which the application relates is to be obtained for the purposes of proceedings (which have been instituted before that court) or (whose institution before that court is contemplated),

IT IS ORDERED THAT —

1. (If applicable) (name of examiner or person who is to obtain the evidence) is hereby appointed to — (set out function).

2. (name of examiner or person who is to obtain the evidence) must —

   (a) (set out the matters required — such as the manner of the examination, the manner of transmitting the evidence when taken or the person to whom the evidence is to be transmitted.)

3. (name of witness to be examined or person from whom evidence is to be obtained) must —

   (a) (set out the matters required of the witness or person from whom the evidence is to be obtained — see *Evidence Act 1906*, s. 117(3)).

Dated: BY THE COURT
[L.S.] Registrar.

[Form 30 inserted: Gazette 8 Feb 1991 p. 587-8; amended: Gazette 28 Jun 2011 p. 2558.]

31. Certificate (O. 39 r. 5(2))

I, ..., Principal Registrar of the Supreme Court of Western Australia, hereby certify that the attached documents are —

(a) a request of (requesting court);

(b) the order of the Supreme Court of Western Australia dated (date) made for the purpose of giving effect to the request;

(c) the deposition (or as the case may be) taken by the examiner pursuant to the order;

(d) (if applicable) the examiner's statement setting out the witness's claim to be exempt from giving evidence;

(e) (if applicable) this Court's request that the witness's claim be determined.

Dated:

[L.S.] Principal Registrar.

[Form 31 inserted: Gazette 8 Feb 1991 p. 588; amended: Gazette 28 Jun 2011 p. 2558.]

31A. Application for subpoena to be set aside (O. 39A r. 4(1))

(*Heading as in order for leave to issue subpoena*)

1. Under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 35, the applicant seeks an order that the subpoena [*identify subpoena*] be set aside on the grounds appearing in the accompanying affidavit.

2. The applicant requests the Court's directions as to the manner in which this application is to be determined.

3.* The applicant requests that any hearing of this application be held by audio link or audiovisual link.

Dated:

[Signature of applicant or applicant's solicitor]

*[Applicant's address for service and telephone number.]**[Delete if not required]*

[Form 31A inserted: Gazette 16 Jul 1999 p. 3198-9; amended: Gazette 28 Jun 2011 p. 2558; 3 Aug 2012 p. 3754.]

31B. Request for application to be determined with hearing (O. 39A r. 4(8))

(*Heading as in order for leave to issue subpoena*)

Under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 36(5), the [*identify person*] requests that the application to set aside the subpoena [*identify subpoena*] be determined with a hearing.

Dated:

[*Signature of applicant or applicant's solicitor*]

[Form 31B inserted: Gazette 3 Aug 2012 p. 3754.]

31C. Request to appear remotely in hearing to set aside subpoena (O. 39A r. 4(9))

(*Heading as in order for leave to issue subpoena*)

1. Under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 36(6)(b), the [*identify person*] requests to appear remotely in the hearing of the application to set aside the subpoena [*identify subpoena*].

2. The applicant was [served/purportedly served*] with the subpoena in New Zealand under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) Part 5 Division 2.

3. A remote appearance medium is, or can reasonably be made, available for the hearing.

4. The remote appearance can be made from [*place in New Zealand*].

5. The [audio link/audiovisual link*] facilities are available at [*courtroom or other place in New Zealand where remote appearance is to be made*].

6. I estimate the remote appearance will take [*amount of time for remote appearance*].

*[*Select one*]

Dated:

[*Signature of applicant or applicant's solicitor*]

[Form 31C inserted: Gazette 3 Aug 2012 p. 3755.]

31D. Certificate of non-compliance with subpoena (O. 39A r. 5)

To: The High Court of New Zealand

[*Address*]

Under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 38, the [*issuing Australian court*] certifies as follows —

1. On [*date*] under the *Trans-Tasman Proceedings Act 2010* (Commonwealth) section 31, the [*issuing Australian court*] gave [*identify person*] leave to serve a subpoena on [*identify person*] in New Zealand. Copies of the subpoena and the order giving leave are attached.

2. On [*date*] the subpoena was served on [*identify person*].

3. *No application to set aside the subpoena either wholly or in part has been made. An application to set aside the subpoena was dismissed by order made on [*insert date*]. A copy of this order is attached to this certificate.

4. On [*date*] [*identify person*] failed to comply with the subpoena.

*[*Delete the inapplicable*]

Dated:

BY THE COURT
[*Signature of appropriate officer*]

Note: The seal of the court is to be affixed.

[Form 31D inserted: Gazette 3 Aug 2012 p. 3755-6.]

32. Default judgment for liquidated demand (O. 13 r. 2; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: ..... of 20 .....

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT FOR LIQUIDATED DEMAND

Judicial officer:

Date of order:

THE COURT ORDERS THAT:

The defendant pay the plaintiff —

(a) $[*insert amount*]; and

(b) $[*insert amount*] costs [*or costs to be taxed*].

The above costs have been taxed and allowed at $[*insert amount*] as appears by the Taxing Officer's certificate dated [*insert date*].

BY THE COURT

REGISTRAR

NOTICE TO DEFENDANT

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you or if you believe that [*name of plaintiff*] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [*insert name and address*].

If you want to contact the lawyer for the plaintiff, you should call [*insert name*] on [*insert number*] or email them at [*insert email address*].

[Form 32 inserted: Gazette 16 Nov 2016 p. 5202-3.]

33. Default judgment where demand unliquidated (O. 13 r. 3; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: ..... of 20 .....

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT WHERE DEMAND UNLIQUIDATED

Judicial officer:

Date of order:

THE COURT ORDERS THAT:

The defendant pay the plaintiff the value of the goods [*or damages, or both, as the case requires*] to be assessed.

BY THE COURT

REGISTRAR

Note: Default judgment after assessment of damages is to be in Form 35.

NOTICE TO DEFENDANT

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you then you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [*insert name and address*].

If you want to contact the lawyer for the plaintiff, you should call [*insert name*] on [*insert number*] or email them at [*insert email address*].

[Form 33 inserted: Gazette 16 Nov 2016 p. 5204-5.]

34. Default judgment in action relating to detention of goods other than in a mortgage action (O. 13 r. 4; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: ..... of 20 .....

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT IN ACTION RELATING TO DETENTION OF GOODS OTHER THAN IN A MORTGAGE ACTION

Judicial officer:

Date of order:

THE COURT ORDERS THAT:

The defendant deliver to the plaintiff the goods described in the writ of summons [*or statement of claim*] as [*insert description of goods*] or pay to the plaintiff the value of those goods to be assessed [*and also damages for their detention to be assessed*].[1]

or

The defendant pay the plaintiff the value of the goods described in the statement of claim to be assessed [*and also damages for their detention to be assessed*].[2]

BY THE COURT

REGISTRAR

Note: Default judgment after assessment of the value of the goods and damages for their detention (if applicable) is to be in Form 35.

NOTICE TO DEFENDANT[1]

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you or if you believe that [*name of plaintiff*] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

or

NOTICE TO DEFENDANT[2]

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you then you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [*insert name and address*].

If you want to contact the lawyer for the plaintiff, you should call [*insert name*] on [*insert number*] or email them at [*insert email address*].

Notes to Form 34:

1. To be used for a default judgment referred to in Order 13 rule 4(1)(a)(i).
2. To be used for a default judgment referred to in Order 13 rule 4(1)(a)(ii).

[Form 34 inserted: Gazette 16 Nov 2016 p. 5205-7.]

35. Default judgment after assessment of damages etc. (O. 13 r. 3 & 4; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: ..... of 20 .....

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT AFTER ASSESSMENT OF DAMAGES ETC.[1]

Judicial officer:

Date of order:

The plaintiff having on the day of 20 , obtained default judgment against the defendant for damages [*or as the case may be*] to be assessed, and the amount found due to the plaintiff having been certified at $[*insert amount*] as appears by the [*master's certificate, or as the case may be*] filed the day of 20 ,

THE COURT ORDERS THAT:

The defendant pay the plaintiff —

(a) $[*insert amount*]; and

(b) $[*insert amount*] costs [*or costs to be taxed*].

The above costs have been taxed and allowed at $[*insert amount*] as appears by the Taxing Officer's certificate dated [*insert date*].

BY THE COURT

REGISTRAR

NOTICE TO DEFENDANT

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you or if you believe that [*name of plaintiff*] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [*insert name and address*].

If you want to contact the lawyer for the plaintiff, you should call [*insert name*] on [*insert number*] or email them at [*insert email address*].

Note to Form 35:

1. The heading and text of this order is to be amended to reflect the assessment.

[Form 35 inserted: Gazette 16 Nov 2016 p. 5207-8.]

36. Default judgment for possession of land other than in a mortgage action (O. 13 r. 5; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: ..... of 20 .....

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT FOR POSSESSION OF LAND OTHER THAN IN A MORTGAGE ACTION

Judicial officer:

Date of order:

THE COURT ORDERS THAT:

1. The defendant give the plaintiff vacant possession of the land described in the writ of summons [*or statement of claim*] as [*insert description of land*].

2. The defendant pay the plaintiff $[*insert amount*] costs [*or costs to be taxed*].

The above costs have been taxed and allowed at $[*insert amount*] as appears by the Taxing Officer's certificate dated [*insert date*].

BY THE COURT

REGISTRAR

NOTICE TO DEFENDANT

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you or if you believe that [*name of plaintiff*] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [*insert name and address*].

If you want to contact the lawyer for the plaintiff, you should call [*insert name*] on [*insert number*] or email them at [*insert email address*].

[Form 36 inserted: Gazette 16 Nov 2016 p. 5209-10.]

36A. Notice to defendant of intention to request Court to make orders for possession, foreclosure or sale of mortgaged property (O. 13 r. 6)

Supreme Court of Western Australia	Action No:
	Notice to defendant of intention to request court to make orders for possession, foreclosure or sale of mortgaged property
Parties	Plaintiff Defendant
Notice to [*insert name of defendant*] **THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS. PLEASE READ IT CAREFULLY**	
On [*date*] the plaintiff [*name of plaintiff*] served you with a notice and a writ of summons, copies of which are attached to this notice. You have not filed a Memorandum of Appearance at the Supreme Court of Western Australia.	

Form 36B

[*Name of plaintiff*] now intends to ask the Court to order that[1] —

1. You pay [*name of plaintiff*] $[*amount claimed*] plus interest of $[*amount of interest per day*] per day [*plus other amounts and reason (e.g. penalties)*] [*etc. as required*].

2. You give possession of your [*description of property*] [*at location of property if relevant*] to [*name of plaintiff*].

3. You pay [*name of plaintiff*] costs of the action.

[*Name of plaintiff*] may request the Court to make these orders 11 days after this notice is served on you.

You should try to get legal advice without delay. Legal Aid WA has an online 'Mortgage stress - self help guide' available on its website at www.legalaid.wa.gov.au or you can telephone the Legal Aid WA InfoLine on 1300 650 579 for free information or a referral to other services that might be able to assist you (open Monday to Friday 8.30 am to 4.30 pm except public holidays). If you need Translating and Interpreting Services contact 131 450, or the National Relay Service (for hearing and speech impaired) contact 133 677.

[*Name of plaintiff*] is represented by [*name of law firm representing plaintiff*], whose address is [*street address*]. If you wish to contact someone at [*name of law firm representing plaintiff*] in relation to this matter then you should contact [*lawyer's name*] on [*lawyer's telephone number*] or by email at [*lawyer's email address*].

Date _____

_____
[*Name of law firm representing plaintiff*]

Note to Form 36A:

1. The text of the order, or orders, should reflect the orders that will be sought. The proposed orders in this form are to be used only if applicable.

[Form 36A inserted: Gazette 16 Nov 2016 p. 5210-11.]

36B. Request to enter default judgment in a mortgage action (O. 13 r. 6)

Supreme Court of Western Australia	Action No:
	Request to enter default judgment in a mortgage action

Form 36B

<table>
<tr><td>Parties</td><td colspan="4">Plaintiff

Defendant</td></tr>
<tr><td>Request</td><td colspan="4">The plaintiff requests the Supreme Court to enter default judgment against [insert defendant] on the ground that [insert defendant] has failed to enter an appearance to the writ of summons filed on [insert date] and served on [insert date].</td></tr>
<tr><td>Orders sought</td><td colspan="4">The plaintiff seeks the following orders:

1.

2.</td></tr>
<tr><td>Amount owing and daily interest</td><td colspan="4">The amount owing to the plaintiff under the mortgage as at the date of the filing of this notice is $[insert amount].

The amount of a day’s interest is $[insert amount].[1]</td></tr>
<tr><td>Affidavits in support</td><td colspan="4">The following affidavits containing all the information required by Order 13 rule 6(2)(b)(ii) are filed with this notice:

1.

2.</td></tr>
<tr><td>Date of Notice</td><td></td><td>Date of filing</td><td colspan="2"></td></tr>
<tr><td rowspan="6">Contact details of party or lawyer

(These details will be inserted into the judgment.)</td><td>Name</td><td colspan="3"></td></tr>
<tr><td>Firm</td><td colspan="3"></td></tr>
<tr><td>Address</td><td colspan="3"></td></tr>
<tr><td>Phone</td><td></td><td>Fax</td><td></td></tr>
<tr><td>Email</td><td colspan="3"></td></tr>
<tr><td>Reference</td><td colspan="3"></td></tr>
<tr><td>Signature of party or lawyer</td><td colspan="3">Party/Party’s Lawyer</td><td>Date</td></tr>
</table>

Note to Form 36B:

1. This item must be included if the claim includes a claim for interest to judgment. See Order 13 rule 6(3)(b).

[Form 36B inserted: Gazette 16 Nov 2016 p. 5212-13.]

36C. Default judgment in a mortgage action (O. 13 r. 6; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: ..... of 20 .....

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT IN A MORTGAGE ACTION

Judicial officer:

Date of order:

THE COURT ORDERS THAT[1]**:**

1. The defendant, within [*insert number*][2] days after service of this judgment, give the plaintiff [*insert "vacant" if applicable*] possession of [*description of property*] [*at location of property if relevant*].

2. The defendant pay the plaintiff —

   (a) $[*insert amount*], which is the amount due under the mortgage as at today's date; and

   (b) interest of $[*insert amount*] per day from [*insert date*] until payment in full in accordance with the terms of the mortgage; and

   (c) $[*insert amount*] costs [*or costs to be taxed*].

The above costs have been taxed and allowed at $[*insert amount*] as appears by the Taxing Officer's certificate dated [*insert date*].

BY THE COURT

REGISTRAR

Form 36C

NOTICE TO DEFENDANT

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you or if you believe that [*name of plaintiff*] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

Legal Aid WA has an online 'Mortgage stress - self help guide' available on its website at www.legalaid.wa.gov.au which includes information about what to do if a judgment is made against you.

You can telephone the Legal Aid WA InfoLine on 1300 650 579 for free information or a referral to other services that might be able to assist you (open Monday to Friday 8.30 am to 4.30 pm except public holidays). If you need Translating and Interpreting Services contact 131 450, or the National Relay Service (for hearing and speech impaired) contact 133 677.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [*insert name and address*].

If you want to contact the lawyer for the plaintiff, you should call [*insert name*] on [*insert number*] or email them at [*insert email address*].

Notes to Form 36C:

1. This form is to be used for default judgment in any mortgage action. The text of the order, or orders, should reflect the effect of the mortgage in question and the orders sought. The proposed orders in this form are to be used only if applicable.

2. 28 days unless the Court orders otherwise. See Order 13 rule 6(6).

[Form 36C inserted: Gazette 16 Nov 2016 p. 5213-15.]

37. Judgment (other than default judgment) after assessment of damages etc. (O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: ..... of 20 .....

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

JUDGMENT (OTHER THAN DEFAULT JUDGMENT) AFTER ASSESSMENT OF DAMAGES ETC.[1]

Judicial officer:

Date of order:

The plaintiff having on the day of 20 , obtained judgment against the defendant for damages [*or as the case may be*] to be assessed, and the amount found due to the plaintiff having been certified at $[*insert amount*] as appears by the [*master's certificate, or as the case may be*] filed the day of 20 ,

THE COURT ORDERS THAT:

The defendant pay the plaintiff —

(a) $[*insert amount*]; and

(b) $[*insert amount*] costs [*or costs to be taxed*].

The above costs have been taxed and allowed at $[*insert amount*] as appears by the Taxing Officer's certificate dated [*insert date*].

BY THE COURT

REGISTRAR

Note to Form 37:

1. The heading and text of this order is to be amended to reflect the assessment.

Form 37

[Form 37 inserted: Gazette 16 Nov 2016 p. 5215-16.]

38. Judgment under Order 14 (O. 14 r. 3)

(*Heading as in action*)

The day of 20 .

The defendant having entered an appearance herein and the Court having under Order 14 rule 3 ordered that judgment as hereinafter provided be entered for the plaintiff against the defendant,

It is this day adjudged that the defendant do pay to the plaintiff $ and $ costs (*or* costs to be taxed),

or

pay to the plaintiff damages to be assessed and costs to be taxed,

or

deliver to the plaintiff the goods described in the statement of claim as

[*or* pay to the plaintiff the value of the said goods to be assessed] [and also damages for their detention to be assessed] and costs to be taxed,

or

give the plaintiff possession of the land described in the statement of claim as and costs to be taxed.

The above costs, etc. (*as in No. 32*).

[Form 38 amended: Gazette 28 Jun 2011 p. 2559.]

39. Judgment after trial without jury (O. 42 r. 1)

Supreme Court of Western Australia General Division	No.: **Judgment after trial without jury**
Parties	Plaintiff Defendant
Trial details	This case was tried in the Supreme Court without a jury on [*date(s)*].
Judgment	On [*date*] the Court ordered that judgment as described below be entered for the [*party*].
Judgment details	[*Set out the Court's orders.*] [*Set out details of any taxation of costs as in Form 32.*]

Date judgment entered	Judgment dated and entered on [*date*].

[Form 39 inserted: Gazette 16 Aug 2017 p. 4422.]

40. Judgment after trial with jury (O. 42 r. 1)

Supreme Court of Western Australia General Division	No.: **Judgment after trial with jury**
Parties	Plaintiff Defendant
Trial details	This case was tried in the Supreme Court with a jury on [*date(s)*].
Jury's findings	The jury found [*state finding as in officer's certificate*].
Judgment	On [*date*] the Court ordered that judgment as described below be entered for the [*party*].
Judgment details	[*Set out the Court's orders.*] [*Set out details of any taxation of costs as in Form 32.*]
Date judgment entered	Judgment dated and entered on [*date*].

[Form 40 inserted: Gazette 16 Aug 2017 p. 4422.]

41. Judgment after trial before master or special referee (O. 42 r. 1)

(*Heading as in action*)

Dated and entered the day of 20 .

This action by an order dated the day of 20 , having been ordered to be tried before master [*or* special referee or arbitrator] and the said master [*or* special referee or arbitrator] having [*insert dates of trial*] tried the said action and having by his certificate dated the day of 20 directed that judgment as hereinafter provided be entered for the plaintiff [*or* defendant],

It is adjudged that (*as in No. 39, according to the master's or special referee's certificate*).

[Form 41 amended: Gazette 30 Nov 1984 p. 3954; 28 Jun 2011 p. 2560.]

42. Judgment after decision of preliminary issue (O. 32 r. 7; O. 42 r. 1)

(*Heading as in cause or matter*)

Dated and entered the day of 20 .

The issue [*or* question] arising in this cause [*or* matter] by the order dated the day of 20 , ordered to be tried before having on the day of 20 been tried before the said and the said having found and having ordered that judgment as hereinafter provided be entered for the [*or* having dismissed the cause or matter],

It is adjudged that [the defendant do pay to the plaintiff $ and his costs of action to be taxed] [the plaintiff do pay to the defendant his costs of defence to be taxed] *or as the case may be according to the order made*.

[Form 42 amended: Gazette 28 Jun 2011 p. 2560.]

43. Judgment for defendant's costs on discontinuance (O. 23 r. 2)

(*Heading as in action*)

The day of 20 .

The plaintiff having by a notice in writing dated the day of , 20 , wholly discontinued this action [*or* withdrawn his claim in this action for] and the defendant's costs of the action [*or* of the claim withdrawn] having been taxed and allowed at $ as appears by the Taxing Officer's certificate dated the day of 20 , and the plaintiff not having paid such costs within 4 days after taxation,

It is this day adjudged that the plaintiff do pay to the defendant $ the said taxed costs, and $ the costs of entering judgment for such taxed costs.

[Form 43 amended: Gazette 28 Jun 2011 p. 2560.]

44. Judgment by consent (O. 42 r. 1(2))

In the Supreme Court of Western Australia	No:	
	Judgment by consent	
Parties	Plaintiff Defendant	
Judgment	In accordance with the consent of the parties, the Court orders — 1. 2.	
Judicial officer's signature	Judicial officer	Date:

[Form 44 inserted: Gazette 12 Jun 2012 p. 2452.]

[Forms 45-59 deleted: Gazette 21 Feb 2007 p. 553.]

60. Summons for appointment of receiver (O. 51 r. 1)

(*Heading as in action*)

Let the defendant C.D. attend the Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, Perth on day the day of 20 at o'clock in the noon on the hearing of an application on the part of the plaintiff for an order that a receiver be appointed [*or* that E.F. be appointed receiver] in this action to receive the rents, profits, and moneys receivable in respect of the interest of the defendant C.D. in the following property, namely [*describe the property*], for the following purposes, namely [*state the purposes*], and on the following terms, namely [*state the terms*], and for an order as to the costs of this application.

Dated, etc.

This summons was taken out by of .

To the abovenamed

[and his solicitor].

[Form 60 amended: Gazette 21 Feb 2007 p. 553; 28 Jun 2011 p. 2560; 16 Nov 2016 p. 5216; 16 Aug 2017 p. 4422-3.]

61. Order directing summons for appointment of receiver and granting injunction meanwhile (O. 51 r. 1)

(*Heading as in action*)

Before in chambers.

Upon reading the affidavit of filed the day of 20 :

Let the defendant C.D. attend the Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, Perth on day the day of 20 at o'clock in the noon on the hearing of an application on the part of the plaintiff for the appointment of E.F. as receiver in this action to receive the rents, profits, and moneys receivable in respect of the said defendant's interest in the following property namely [*describe the property*], for the following purposes, namely [*state the purposes*], and on the following terms, namely [*state the terms*], .

And the plaintiff [by his solicitor] hereby undertaking to abide by any order the Court may hereafter make should it decide that the said defendant has sustained damage by reason of this order and is entitled to damages which the plaintiff ought to pay, it is ordered that the said defendant by himself, his agents or servants, or otherwise, be restrained, and an injunction is hereby granted restraining him, until after the hearing of the above application, from assigning charging or otherwise dealing with the said property.

Dated the day of 20 .

[Form 61 amended: Gazette 21 Feb 2007 p. 553-4; 28 Jun 2011 p. 2560; 16 Nov 2016 p. 5216; 16 Aug 2017 p. 4423.]

62. Receiver order (interim) (O. 51 r. 1)

(*Heading as in action*)

Before in chambers.

Upon hearing and upon reading the affidavit of filed the day of 20 .

And upon the plaintiff undertaking to be answerable for all sums to be received by the receiver hereinafter named, [*or* as the case may be]

It is ordered that be appointed [without security] until the day of 20 next inclusive or further order to receive the rents, profits, and moneys receivable in respect of the abovenamed defendant's interest in the following property namely [*describe the property*], but without prejudice to the rights of any prior incumbrancer or his possession (if any), and the tenants of premises comprised in the said property are (without prejudice as aforesaid) to attorn and pay their rents in arrear and growing rents to the said so long as he shall continue to be such receiver, and that all questions as to passing his accounts and payments thereunder and all further questions be reserved until further order.

[And the plaintiff [by his solicitor]] hereby undertaking to abide by any order the Court may hereafter make (*continue as in Form No. 61 if an interim injunction has been granted*).

Defendant to be at liberty to apply in the meantime.

Dated the day of 20 .

[Form 62 amended: Gazette 28 Jun 2011 p. 2560.]

[Form 63 deleted: Gazette 16 Aug 2017 p. 4423.]

64. Notice of originating motion (O. 54 r. 5)

In the Supreme Court of Western Australia
*General Division/Court of Appeal No.

Notice of originating motion

Parties Plaintiff

Defendant

Notice

Form 65

At the hearing below in the *Supreme Court/Court of Appeal, the [*name of party*] will apply for [*state concisely the nature of the claim or the relief or remedy sought*].

Grounds of application

The grounds of the application are:
[*State grounds in numbered paragraphs*]

Hearing details

The court will hear this application —
on [*date*] at [*time*],
at the *Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, Perth.
*Supreme Court of Western Australia, Court of Appeal, Stirling Gardens, Barrack Street, Perth.

*Short notice

On [*date*], under the *Rules of the Supreme Court 1971* Order 54 rule 4, the Court abridged the time for serving this notice.

Applicant's service details[1]

*Name of lawyer:
*Address where lawyer conducts business:
Postal address for service of documents:
*Email address:
*Fax no.: ..... *Telephone no.: .....

Applicant's signature

..... Date: .....
Applicant/Applicant's lawyer

Footnotes to Form 64 —

* Delete the inapplicable.

1. Must be provided unless otherwise ordered by the Court. See Order 71A r. 2 and 3A.

[Form 64 inserted: Gazette 16 Aug 2017 p. 4424-5.]

65. Notice of motion (O. 54 r. 5)

(*Heading as in cause or matter*)

TAKE notice that [pursuant to the leave of
given on the day of 20 .] the Court will be moved on
the day of 20 at
o'clock in the noon, or so soon thereafter as counsel can be heard,
by counsel for the abovenamed [plaintiff] [or defendant] for an order that
and that the costs of the application be .

Dated the day of 20 .

(Signed)
of
[agent for
of]

Solicitor for the

To Solicitor for the .

[Form 65 amended: Gazette 28 Jun 2011 p. 2560; 16 Aug 2017 p. 4423.]

66. Order of committal (O. 55 r. 7(4))

(*Heading as in action*)

UPON motion this day made unto this Court by counsel for the plaintiff and upon reading [an affidavit of filed the day of 20 of service on the defendant C.D. of a copy of the order of the Court dated the day of 20 and of notice of this motion]:

And it appearing to the satisfaction of the Court that the defendant C.D. has been guilty of contempt of court in [*state the contempt*]:

It is ordered that for his said contempt the defendant do stand committed to Prison to be there imprisoned [until further order]. [It is further ordered that this order shall not be executed if the defendant C.D. complies with the following terms, namely, .]

Dated the day of 20 .

[Form 66 amended: Gazette 28 Jun 2011 p. 2561.]

67A. Application for judicial review (O. 56 r. 2)

Supreme Court of Western Australia	No:
	Application for judicial review
Applicant	

Form 67A

Respondent[1]	Name: Office:
Other parties	
Decision or conduct to be reviewed	Date: Where made or occurring: Written law governing: Description:
Application[2]	The applicant applies for judicial review of the above decision or conduct and — ❒ a writ of certiorari; ❒ a writ of mandamus; ❒ a writ of prohibition; ❒ a writ of *procedendo*; ❒ an information of *quo warranto*; ❒ a declaration; ❒ an injunction; ❒ this order (being an order which would have the same effect as a remedy that could be provided by means of one or more of the above writs) —
Grounds of application	The grounds for the above application are these — 1.
Late application[3]	❒ The applicant also applies for leave to proceed with this application which is made outside the limitation period.

Applicant's geographical address[4]			
Applicant's lawyer[5]			
Address where lawyer conducts business[5]			
Intention to act in person[3]	❒ I intend to act in person in this application.		
Postal address for service of documents[6]			
Email address[7]			
Telephone number[8]		Fax number[7]	
Signature of applicant or lawyer	Applicant/Applicant's lawyer		Date:

Notes to Form No. 67A —

1. The respondent is the person whose decision or conduct is to be reviewed.
2. Tick one or more.
3. Tick only if necessary.
4. Must be provided unless otherwise ordered by the Court. See Order 71A r. 2 and 3A.
5. Must be provided if a lawyer has been appointed.
6. Must be provided - to be lawyer's postal address if applicant is legally represented.
7. Optional - if provided, may be used for service of documents.
8. Must be provided - to be lawyer's telephone number if applicant is legally represented.

[Form 67A inserted: Gazette 13 Nov 2015 p. 4653-4.]

67. Certiorari (O. 56 r. 14)

(Heading as in cause or matter)

Writ of certiorari

To: [*Name and address*]

This writ commands you, on or before [*date*], to send to the Supreme Court, at [*address*], [*state the record or decision to be quashed*] together with this writ, or a copy of it, for that court to deal with as it sees fit.

Dated:

.....
Judicial officer

[Form 67 inserted: Gazette 28 Jul 2010 p. 3487.]

[Form 68 deleted: Gazette 29 Apr 2005 p. 1801.]

69. Mandamus (O. 56 r. 16)

(Heading as in cause or matter)

Writ of mandamus

To: [*Name and address*]

This writ commands you to [*set out the act to be done*] or show cause why you have not done it.

The *Rules of the Supreme Court 1971* Order 56 rule 20 requires you to file in the Supreme Court, on or before [*date*], this writ, or a copy of it, and a certificate stating either that you have done the above act or why you have not done it.

Disobeying this writ is a contempt of court which may be punished by imprisonment or a fine or both.

Dated:

.....
Judicial officer

[Form 69 inserted: Gazette 28 Jul 2010 p. 3487-8.]

70. *Procedendo* (O. 56 r. 32)

(Heading as in cause or matter)

Writ of *procedendo*

To: [*Name and address*]

By a writ of prohibition dated [*date*] you were prohibited from [*set out the prohibited act*].

This writ commands you to [*set out the act to be done*] as if that writ of prohibition had not been issued.

Dated:

.....
Judicial officer

[Form 70 inserted: Gazette 28 Jul 2010 p. 3488.]

71. Prohibition (O. 56 r. 33)

(Heading as in cause or matter)

Writ of prohibition

To: [*Name and address*]

This writ prohibits you from [*set out the prohibited act*].

Dated:

.....
Judicial officer

[Form 71 inserted: Gazette 28 Jul 2010 p. 3488-9.]

[Form 72 deleted: Gazette 28 Jul 2010 p. 3489.]

73. Habeas corpus (O. 57 r. 10)

(Heading as in cause or matter)

Writ of *habeas corpus ad subjiciendum*

To: [*Name and address*]

This writ commands you to have [*name of plaintiff or person restrained*] before the Supreme Court at [*address*] on [*date*] at [*time of day*] and to then submit to the further order of the court as to the custody of that person (***the person restrained***).

The *Rules of the Supreme Court 1971* Order 57 rule 8 requires you, before or at the above time, to file in the Supreme Court a return to this writ, indorsed on or attached to the writ, that states all the causes of the detention of the person restrained.

Disobeying this writ is a contempt of court which may be punished by imprisonment or a fine or both.

Dated:

.....
Judicial officer

[Form 73 inserted: Gazette 28 Jul 2010 p. 3489; amended: Gazette 16 Aug 2017 p. 4423.]

74. Originating summons, appearance required (O. 58 r. 14)

No. of 20 .

In the Supreme Court
of Western Australia.

[In the matter of .]

Between

A.B. Plaintiff,
and
C.D. Defendant.

Let C.D. of within service of this summons on him, exclusive of the day of such service, cause an appearance to be entered for him to this summons and thereafter attend before Court at such time and place as shall hereafter be fixed for such hearing.

This summons is issued upon the application of A.B. of who claims [*state the nature of the claim*].

Dated, etc.

This summons was taken out by

Solicitor for the said plaintiff whose address for service is

Note: If the defendant does not enter an appearance at the Central Office, Supreme Court, Perth, within the time abovementioned, and thereafter attend before the Court at such time and place as shall hereafter be fixed for such hearing, such order will be made and proceedings taken as the Court thinks just and expedient.

[Form 74 amended: Gazette 27 Aug 1976 p. 3226; 30 Nov 1984 p. 3954; 28 Jun 2011 p. 2561; 16 Aug 2017 p. 4425-6.]

75. Originating summons, appearance not required (O. 58 r. 14)

(*Heading as in Form No. 74*)

Let C.D. of attend before the Supreme Court, Perth, on the day of 20 at o'clock in the noon on the hearing of an application by the plaintiff that [*state the nature of the claim*].

Dated, etc.

It is intended to serve this summons on C.D. [and E.F. of .]

This summons was taken out, etc. (*as in Form No. 74*).

Note: If a defendant does not attend personally or by his counsel or solicitor at the time and place abovementioned such order will be made as the Court thinks just and expedient.

[Form 75 amended: Gazette 30 Nov 1984 p. 3954; 28 Jun 2011 p. 2561; 16 Aug 2017 p. 4426.]

76. Notice of appointment to hear originating summons (O. 58 r. 19)

(*Heading as in Form No. 74*)

To [*name of defendant or plaintiff*] of

Take notice that the originating summons issued herein on the day of 20 , will be heard by the Supreme Court, Perth, on the day of 20 at o'clock in the noon.

If you do not attend in person or by your solicitor or counsel at the time and place mentioned, such order will be made and proceedings taken as the Court thinks just and expedient.

Dated, etc.

(Signed)
Solicitor for

[Form 76 amended: Gazette 30 Nov 1984 p. 3954; 28 Jun 2011 p. 2561; 16 Aug 2017 p. 4423.]

77. Summons (general form) (O. 59 r. 4(1))

In the Supreme Court of Western Australia. No. of 20 .

Between Plaintiff,

and

Defendant.

Let all parties concerned attend the Supreme Court on day the day of , 20 , at o'clock in the noon, on the hearing of an application on the part of

Dated the day of , 20 .

This summons was taken out by of
Solicitor for

To

[Form 77 amended: Gazette 28 Jun 2011 p. 2561; 16 Aug 2017 p. 4424.]

78. Order (general form) (O. 59 r. 10)

(Heading as in cause or matter)

Judicial officer(s):

Date of order:

The Court orders (or declares) —

1.

2.

.....
Judicial officer

[Form 78 inserted: Gazette 28 Jul 2010 p. 3490.]

[Form 79 deleted: Gazette 21 Feb 2007 p. 563.]

80A. Appeal notice (Registrar's decision) (O. 60A r. 5(3))

Supreme Court of Western Australia	No:
	Notice of appeal from decision of Registrar
Parties	Plaintiff Defendant
Name of party appealing	
Name of Registrar	
Date of decision	
Last date for appealing[1]	Last date: Is an extension of time needed? Yes/No
Orders or directions appealed against	1. 2. 3.

Grounds of appeal				
Orders sought on appeal	1. 2. 3.			
Directions sought to facilitate appeal[2]	1. 2. 3.			
Dates when unavailable for hearing of appeal[3]				
Date of notice		Date of filing		
Signature of party appealing or lawyer	Party appealing/Lawyer		Date:	
Contact details of party appealing or lawyer	Name			
	Firm			
	Address			
	Phone		Fax	
	Email			
	Reference			

Notes to Form No. 80A —

1. The date being 10 days after the date of the order or decision appealed against. See Order 60A r. 5(1).
2. For example, filing of further affidavits or submission.
3. For the period of 32 days beginning on the 14th day after the date of the filing of the appeal notice. See Order 60A r. 5(3)(e).

[Form 80A inserted: Gazette 13 Nov 2015 p. 4654.]

80. Notice of judgment or order (O. 61 r. 3(3))

(*Heading as in cause or matter*)

Take notice that a judgment [*or* order] of this Court was given [*or* made] on the day of 20 , by which it was [*state substance of judgment or order*].

And also take notice that from the time of the service of this notice you [*or* the infant or the represented person *as may be*] will be bound by the said judgment [*or* order] to the same extent as you [*or* he] would have been if you [*or* he] had originally been made a party.

And also take notice that without entering any appearance you [*or* the said infant *or* represented person] may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment [*or* order] and that after entering an appearance at the Central Office, Supreme Court, Perth, you [*or* the said infant *or* represented person] may attend the proceedings under the said judgment [*or* order].

Dated the day of 20 .

(Signed)

To

[Form 80 amended: Gazette 22 Jul 1984 p. 3748; 28 Jun 2011 p. 2561.]

81. Advertisement for creditors (O. 61 r. 15(2))

A.B. Deceased. By judgment [*or* order] of the Supreme Court of Western Australia, dated and made in an action No. of 20 , In the matter of the estate of A.B. deceased, S. against P., the creditors of A.B., late of , who died on , are to send by post prepaid to of so as to reach that address on or before 20 , their full names, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them, or in default thereof they will be excluded from the benefit of the said judgment [*or* order] unless the Court on application otherwise orders.

Every creditor holding any security is to produce the same at the office of the master at the Supreme Court, Perth, on the day of 20 , at o'clock in the noon, being the time appointed for adjudicating upon the claims.

Dated this day of 20 .

(Signature and address of the solicitor of the party prosecuting the judgment or order).

[Form 81 amended: Gazette 28 Jun 2011 p. 2561.]

82. Advertisement for claimants other than creditors (O. 61 r. 15(2))

A.B. Deceased. By judgment [*or* order] of the Supreme Court of Western Australia dated and made in an action No. of 20 , In the matter of the estate of A.B. deceased (late of) who died on the , S. against P. the following inquiry was [*or* inquiries were] directed, viz.:

[*Set out inquiry or inquiries*.]

Notice is hereby given that all persons claiming to be entitled under the said inquiry [*or* inquiries] are to send by post prepaid to of so as to reach that address on or before 20 , their full names, addresses and descriptions, and full particulars of their claims or in default thereof they will be excluded from the benefit of the said judgment [*or* order] unless the Court on application otherwise orders. Claimants are to attend personally or by their solicitor before the Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, Perth, on at o'clock in the noon, being the time appointed for adjudicating upon the claims.

Dated this day of 20 .

Master.

[*Add name and address of the solicitor of the party prosecuting the judgment or order and state on whose behalf he is acting.*]

[Form 82 amended: Gazette 28 Jun 2011 p. 2561; 16 Nov 2016 p. 5216; 16 Aug 2017 p. 4424.]

[Forms 82A, 82AA and 82B deleted: Gazette 29 Apr 2005 p. 1800.]

83. Appeal notice (O. 65 r. 10)

Supreme Court of Western Australia General Division		No:
		Appeal notice
Parties to the appeal		Appellant Respondent
Primary court's decision		
Primary court Case number Parties Date of decision Judicial officer		at
Decision details		
Appeal details		
Notice of appeal	The appellant appeals to the Supreme Court (General Division) against the above decision.	
Act that allows the appeal[1]		section:
Grounds of appeal[2]	1.	

Form 83

Notice to the respondent	If you want to take part in this appeal you must file a Form No. 85 under the *Rules of the Supreme Court 1971* within 7 days after you are served with this notice and serve it on the appellant.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Leave to appeal	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the appellant legally represented in this appeal? Yes/No[3] Is the appellant applying for legal aid? Yes/No	
Appellant's details		
Appellant's geographical address[3]		
Appellant's service details[4]		
Signature and date		
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form No. 83 —

1. State the short title of the Act under which the appeal is being made.
2. Set out the grounds in numbered paragraphs.
3. Must be provided unless otherwise ordered by the Court. See Order 71A r. 2 and 3A.
4. Must be in accordance with Order 71A.

[Form 83 inserted: Gazette 21 Feb 2007 p. 572-3; amended: Gazette 13 Nov 2015 p. 4655; 27 Feb 2018 p. 623.]

84. Service certificate (O. 65 r. 10(7))

Supreme Court of Western Australia General Division	No: **Service certificate**	
Parties to the appeal	Appellant Respondent	
Certificate	I certify that on [*date*] at [*place*] [*name of server*] served the respondent personally with — ● a copy of an appeal notice dated [*date*]; and ● a copy of every other document that was filed with the appeal notice. I undertake to file an affidavit of service if the Court requires me to.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

[Form 84 inserted: Gazette 21 Feb 2007 p. 573; amended: Gazette 27 Feb 2018 p. 623.]

85. Notice of respondent's intention (O. 65 r. 12)

Supreme Court of Western Australia General Division	No:	
	Notice of respondent's intention	
Parties to the appeal	Appellant Respondent	
Notice [Tick one box]	❒ The respondent intends to take part in this appeal. ❒ The respondent does not intend to take part in this appeal and will accept any order made by the court in the appeal other than as to costs.	
Cross appeal [Tick one box]	❒ The respondent is not appealing against the primary court's decision specified in the appellant's appeal notice. ❒ The respondent also appeals against the primary court's decision specified in the appellant's appeal notice.	
Last date for appealing[1]	Last date: Is an extension of time needed? Yes/No	
Leave to appeal[1]	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the respondent legally represented in this appeal? Yes/No Is the respondent applying for legal aid? Yes/No	
Respondent's details		
Respondent's geographical address[2]		
Respondent's service details[3]		
Signature and date		
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

Notes to Form No. 85 —

1. Complete this only if the respondent also appeals against the primary court's decision.
2. Must be provided unless otherwise ordered by the Court. See Order 71A r. 2 and 3A.
3. Must be in accordance with Order 71A.

[Form 85 inserted: Gazette 21 Feb 2007 p. 574; amended: Gazette 13 Nov 2015 p. 4655.]

86. Application in an appeal (O. 65 r. 13)

Supreme Court of Western Australia General Division	No:	
	Application in an appeal	
Parties to the appeal	Appellant Respondent	
Applicant	Appellant/Respondent	
Application[1]	The applicant applies for —	
Conference between parties [Tick one box]	❒ The parties to this application have conferred about the issues giving rise to this application and have not resolved them. ❒ The parties to this application have not conferred about the issues giving rise to this application because[2]	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:

Notes to Form No. 86 —

1. State —
   - the order or orders sought; and
   - the written law and provision under which the application is made.
2. State the reasons why the parties have not conferred.

[Form 86 inserted: Gazette 21 Feb 2007 p. 574-5.]

87. Consent notice (O. 65 r. 15 & 18)

Supreme Court of Western Australia General Division	No:	
	Consent notice	
Parties to the appeal	Appellant Respondent	
Consent	We consent to the following order being made —	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

[Form 87 inserted: Gazette 21 Feb 2007 p. 575.]

88. Request for hearing (O. 65 r. 7)

Supreme Court of Western Australia General Division	No: **Request for hearing**	
Parties to the appeal	Appellant Respondent	
Request	The appellant/respondent requests a hearing of the matter decided provisionally by [*name of judge*] on [*date*] in this appeal.	
Signature of party requesting or lawyer	Appellant/Respondent/ Appellant's lawyer/Respondent's lawyer	Date:

[Form 88 inserted: Gazette 21 Feb 2007 p. 575.]

89. Discontinuance notice (O. 65 r. 17)

Supreme Court of Western Australia General Division	No: **Discontinuance notice**	
Parties to the appeal	Appellant Respondent	
Notice	The appellant discontinues this appeal.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

[Form 89 inserted: Gazette 21 Feb 2007 p. 575.]

[Forms 90-93 deleted: Gazette 21 Feb 2007 p. 572.]

93A. *Public Notaries Act 1979* s. 8, certificate (O. 76 r. 2)

IN THE SUPREME COURT
OF WESTERN AUSTRALIA

IN THE MATTER of the *Public Notaries Act 1979*

and

IN THE MATTER of an application by A.B. to be appointed as a General Public Notary (or as a District Public Notary *as the case may be*).

PURSUANT to section 8 of the *Public Notaries Act 1979*, I HEREBY CERTIFY that A.B. of , a Legal Practitioner of this Court, is qualified to be a General Public Notary [*or* a District Public Notary for the *(name of district)*].

Dated the day of 20 .

Chief Justice of Western Australia.

[Form 93A inserted: Gazette 18 Jul 1980 p. 2386; amended: Gazette 21 Feb 2007 p. 584; 22 Feb 2008 p. 649; 28 Jun 2011 p. 2561; SL 2022/74 r. 15.]

93B. Notice of intention to apply for appointment as public notary (O. 76 r. 3)

(*Heading as in Form No. 93A*)

NOTICE is hereby given that (name and address), a Legal Practitioner of the Supreme Court of Western Australia, intends to apply to the Supreme Court (full bench) on the , 20 at the hour of in the noon, or so soon thereafter as counsel can be heard, for appointment as a General Public Notary [*or* as a District Public Notary for the *(name of district)* in the State of Western Australia].

Any person desiring to object to the appointment of the applicant may be heard before the Supreme Court (full bench) by himself or counsel; but written notice, stating the grounds of objection, must be filed not less than 7 days before the day fixed for the hearing of the application.

Dated the day of 20 .

[Form 93B inserted: Gazette 18 Jul 1980 p. 2386; amended: Gazette 29 Apr 2005 p. 1794; 21 Feb 2007 p. 584; 28 Jun 2011 p. 2562; 27 Feb 2018 p. 623; SL 2022/74 r. 15.]

93C. Certificate of appointment as public notary Western Australia (O. 76 r. 5(1))

IN THE SUPREME COURT

I HEREBY CERTIFY that

of

has this day been appointed as a General Public Notary for the State of Western Australia [*or* as a District Public Notary for the *(name of district)* in the State of Western Australia] and that his name has been entered on the Roll of Public Notaries.

Given under my hand and the seal of the Court, this day of 20 .

Registrar of the Supreme Court.

[Form 93C inserted: Gazette 18 Jul 1980 p. 2386; amended: Gazette 21 Feb 2007 p. 584; 28 Jun 2011 p. 2562.]

93D. Certificate that name of public notary remains on roll (O. 76 r. 5(2))

Western Australia

IN THE SUPREME COURT

I HEREBY CERTIFY that

of

was duly appointed as a General Public Notary for the State of Western Australia [*or* as a District Public Notary for the *(name of district)* in the State of Western Australia] and that his name was entered on the Roll of Public Notaries on the day of 20 , and still remains on the Roll.

Given under my hand and the seal of the Court, this day of 20 .

Registrar of the Supreme Court.

[Form 93D inserted: Gazette 18 Jul 1980 p. 2387; amended: Gazette 21 Feb 2007 p. 584; 28 Jun 2011 p. 2562.]

[Form 94 deleted: Gazette 21 Feb 2007 p. 584.]

[Forms 95, 96, 97, 98 and 98A deleted: Gazette 29 Apr 2005 p. 1801.]

99. *Escheat (Procedure) Act 1940*, notice of application under (O. 80 r. 3)

IN THE SUPREME COURT
OF WESTERN AUSTRALIA.

In the matter of

deceased

Ex parte

The State of Western Australia.

Notice of Application for Order of Escheat.

TAKE NOTICE that an application will be made on the day of , 20 , at o'clock in the noon, to the judge in chambers at the Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, Perth, for an Order that the property mentioned hereunder, viz: shall be and become the property of the State by way of Escheat.

Any person claiming title to the abovementioned property or premises may appear at the time and place abovementioned in support of the claim.

State Solicitor.

[Form 99 amended: Gazette 19 Apr 2005 p. 1301; 28 Jun 2011 p. 2562; 16 Nov 2016 p. 5216.]

100. *Escheat (Procedure) Act 1940*, order of escheat (O. 80 r. 7)

IN THE SUPREME COURT
OF WESTERN AUSTRALIA.

In the matter of

deceased

Ex parte

The State of Western Australia.

UPON hearing and upon reading the affidavit of , filed the day of 20 , and having taken into consideration the application of the State Solicitor dated the day of 20 , the Court orders that the property mentioned in the said application, viz: shall be and become the property of the State by way of Escheat [*or as the case may be*].

Dated this day of 20 .

[Form 100 amended: Gazette 19 Apr 2005 p. 1301; 28 Jun 2011 p. 2562; 16 Aug 2017 p. 4424.]

101. Application for extraordinary licence (O. 81C r. 2(1))

Road Traffic (Authorisation to Drive) Act 2008 s. 27 Supreme Court of Western Australia No:		**Application for extraordinary licence**
Applicant	Full name	
	Address	
	Date of birth	
	Occupation	
	Employment [Tick one box]	❒ Self employed ❒ Not employed ❒ Employed by the employer below
	Employer's name and address	
Details of disqualification from holding or obtaining a driver's licence	Date disqualified	
	Period disqualified	
	Reason[1]	
Application	Under the *Road Traffic (Authorisation to Drive) Act 2008* s. 27 I apply for an order directing the CEO to issue an extraordinary licence that allows me to drive — • vehicles of class: • in these localities: • on these days at these times: • for these purposes:	
Grounds for this application[2]	1.	
Certificate by applicant [Tick one box]	A licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is not in force against me. ❒ I have not been refused an extraordinary licence by a court within the 6 months before the date of this application. ❒ I made a special application for an extraordinary licence that was refused by the [*name of*] Court on [*date*], but otherwise I have not been refused an extraordinary licence by a court within the 6 months before the date of this application.	
Signature of applicant		Date
Hearing details	This application will be heard — on [*date*] at [*time*] or as soon after as possible, at [*place*]	

Form 102

Notes to Form No. 101 —

1. If disqualified by a court after being convicted of an offence, state the court and the offence and, if the offence was against the *Road Traffic Act 1974* Part V Division 2 (including s. 63, 64, 64AB, 64B, 67, 67AA, 67AD and 67A), state whether the conviction was the applicant's first, second or subsequent for the offence. If disqualified for some other reason, give details.

2. Note the *Road Traffic (Authorisation to Drive) Act 2008* s. 30. Use numbered paragraphs.

[Form 101 inserted: Gazette 21 Feb 2007 p. 588; amended: Gazette 19 Dec 2014 p. 4848; SL 2021/65 r. 4.]

102. Application by holder to vary extraordinary licence (O. 81C r. 2(2))

<table>
<tr><td colspan="2">*Road Traffic (Authorisation to Drive) Act 2008* s. 35(1)
Supreme Court of Western Australia
No:</td><td colspan="3">Application by holder to vary extraordinary licence</td></tr>
<tr><td rowspan="2">Applicant</td><td>Full name</td><td colspan="3"></td></tr>
<tr><td>Address</td><td colspan="3"></td></tr>
<tr><td rowspan="3">Extraordinary licence details</td><td>Court that ordered it</td><td colspan="3"></td></tr>
<tr><td>Date of court order</td><td colspan="3"></td></tr>
<tr><td>Licence's limitations and conditions</td><td colspan="3"></td></tr>
<tr><td>Application
[Tick one box]</td><td colspan="4">I hold the above extraordinary licence. Under the *Road Traffic (Authorisation to Drive) Act 2008* s. 35(1) I apply for —
❒ An order that varies the above limitations and conditions by:

❒ An order that cancels the above limitations and conditions and substitutes these limitations and conditions:</td></tr>
<tr><td>Grounds for this application[1]</td><td colspan="4">1.</td></tr>
<tr><td>Signature of applicant</td><td></td><td>Date</td><td></td></tr>
<tr><td>Hearing details</td><td colspan="4">This application will be heard —
on [*date*] at [*time*] or as soon after as possible,
at [*place*]</td></tr>
</table>

Note to Form No. 102 —

1. Note the *Road Traffic (Authorisation to Drive) Act 2008* s. 35(4). Use numbered paragraphs.

[Form 102 inserted: Gazette 21 Feb 2007 p. 589; amended: Gazette 19 Dec 2014 p. 4848.]

103. Application by CEO to vary, cancel extraordinary licence (O. 81C r. 2(3))

<table>
<tr><td colspan="2">*Road Traffic (Authorisation to Drive) Act 2008* s. 35(2)

Supreme Court of Western Australia
No:</td><td colspan="3">Application by CEO to vary extraordinary licence</td></tr>
<tr><td rowspan="5">Extraordinary licence details</td><td>Holder’s name</td><td colspan="3"></td></tr>
<tr><td>Holder’s address</td><td colspan="3"></td></tr>
<tr><td>Court that ordered it</td><td colspan="3"></td></tr>
<tr><td>Date of court order</td><td colspan="3"></td></tr>
<tr><td>Licence’s limitations and conditions</td><td colspan="3"></td></tr>
<tr><td>Application
[Tick one box]</td><td colspan="4">Under the Road Traffic (Authorisation to Drive) Act 2008 s. 35(2) the CEO applies for —
❒ An order that varies the above limitations and conditions by:
❒ An order that cancels the above limitations and conditions and substitutes these limitations and conditions:
❒ An order that cancels the above extraordinary licence.</td></tr>
<tr><td>Grounds for this application[1]</td><td colspan="4">1.</td></tr>
<tr><td>Signature of applicant</td><td>for CEO</td><td>Date</td><td colspan="2"></td></tr>
<tr><td>Hearing details</td><td colspan="4">This application will be heard —
on [date] at [time] or as soon after as possible,
at [place]</td></tr>
</table>

Form 104

Note to Form No. 103 —

1. Note the *Road Traffic (Authorisation to Drive) Act 2008* s. 35(4). Use numbered paragraphs.

[Form 103 inserted: Gazette 21 Feb 2007 p. 589-90; amended: Gazette 19 Dec 2014 p. 4848-9.]

104. Application for removal of disqualification (O. 81C r. 2(4))

Road Traffic (Authorisation to Drive) Act 2008 s. 24(1) Supreme Court of Western Australia No:		**Application for removal of disqualification**	
Applicant	Full name		
	Address		
	Date of birth		
	Occupation		
Details of order disqualifying applicant from holding or obtaining a driver's licence	Court that made the order		
	Date of order		
	Period disqualified		
	Reason[1]		
Application	Under the *Road Traffic (Authorisation to Drive) Act 2008* s. 24(1), I apply for an order removing the above disqualification.		
Grounds for this application[2]	1.		
Certificate by applicant	An application made under the *Road Traffic (Authorisation to Drive) Act 2008* s. 24(1) in respect of the above disqualification has not been refused in the year preceding the date of this application.		
Signature of applicant		Date	
Hearing details	This application will be heard — on [*date*] at [*time*] or as soon after as possible, at [*place*]		

Notes to Form No. 104 —

1. State the offence(s) for which the applicant was disqualified and, if the offence was against the *Road Traffic Act 1974* Part V Division 2 (including s. 63, 64, 64AB, 64B, 67, 67AA, 67AD and 67A), state whether the conviction was the applicant's first, second or subsequent for the offence. If disqualified for some other reason, give details.
2. Note the *Road Traffic (Authorisation to Drive) Act 2008* s. 24(5). Use numbered paragraphs.

[Form 104 inserted: Gazette 21 Feb 2007 p. 590; amended: Gazette 19 Dec 2014 p. 4849; SL 2021/65 r. 5.]

[Forms 105-107 deleted: Gazette 15 Mar 2013 p. 1207.]

108. *Criminal and Found Property Disposal Act 2006*, claim under (O. 81G r. 3)

Supreme Court of Western Australia General Division		No:
		***Criminal and Found Property Disposal Act 2006* claim**
Parties		Claimant Defendant
Claim[1]		This claim is made under the *Criminal and Found Property Disposal Act 2006* section In relation to the property described below, the claimant applies for — 1.
Property to which claim relates[2]		
Estimated value[3]		$
Hearing details		This claim will be heard on 20 not before a.m./p.m. at the Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, Perth.
Claimant's details		
Claimant's geographical address[4]		
Claimant's service details[5]		
Signature and date		

Form 108

Signature of claimant or solicitor	Claimant/Claimant's solicitor	Date:

Notes to Form No. 108 —

1. State the section(s) of the *Criminal and Found Property Disposal Act 2006* under which the claim is made.

   State the order(s) the claimant wants the Court to make in numbered paragraphs.
2. Describe the property to which the claim relates.
3. State the estimated value of the property.
4. Must be provided unless otherwise ordered by the Court. See Order 71A r. 2 and 3A.
5. Must be in accordance with Order 71A.

[Form 108 inserted: Gazette 22 Feb 2008 p. 648-9; amended: Gazette 13 Nov 2015 p. 4655; 16 Nov 2016 p. 5216.]

Schedule 3 — Payment into and out of court

[O. 24 r. 12]

[Heading inserted: Gazette 28 Jun 2011 p. 2563.]

*[**1.** Deleted: Gazette 21 Feb 2007 p. 596.]*

2. When any party intends to pay money into court the provisions of regulation 15 shall be complied with. The Accountant, on receiving the money, shall give an official receipt for the money, setting out the particulars. Where the money is paid in upon a notice or pleading, a signed copy of such notice or pleading must first have been filed.

3. Money paid into court shall be paid by the Accountant to the Treasurer, except when the money is to be invested by the Public Trustee, in which case it shall be transferred to the Public Trustee.

4. Where money is paid into court under a judgment or order, a copy of the judgment or order shall be lodged with the Accountant forthwith by the person or party making the payment in or his solicitor. If the money or any part of the money is transferred to the Public Trustee for investment the copy of the judgment or order shall be forwarded by the Accountant to the Public Trustee.

[Clause 4 amended: Gazette 27 Feb 2018 p. 624.]

*[**5.** Deleted: Gazette 5 Apr 1991 p. 1401.]*

6. Where money is paid into court as security for costs, if after the cause or matter has been finally disposed of, the party who paid the money in is entitled to have the money paid out to him, the taxing officer shall on the taxation of costs give to such a party a certificate that he is so entitled. Upon production of such certificate to the Accountant, unless an order restraining the payment out has previously been lodged with the Accountant, the money mentioned in the certificate will, on request, be paid out to the party mentioned in the certificate as entitled thereto, or on his written authority to his solicitor. In all other cases money paid into court as security for costs will not be paid out except on production to the Accountant of an order of the Court or a judge.

7. On bespeaking payment out of court of money paid in on a notice or pleading, a copy of the original receipted notice or pleading must be

lodged at the office of the Accountant.

[Clause 7 amended: Gazette 27 Feb 2018 p. 624.]

8. Where money is to be paid out under an order or authority, on bespeaking the payment out, the order or authority must be lodged at the Central Office, and after having been examined by the Principal Registrar must be filed. A copy of the order or authority shall also be lodged with the Accountant by the solicitor or party seeking the payment out.

[Clause 8 amended: Gazette 14 Dec 1979 p. 3872; 27 Feb 2018 p. 624.]

9. Where the money to be paid out has been transferred to the Public Trustee for investment, the documents required under regulations 7 and 8 to be lodged with the Accountant, shall be lodged instead with the Public Trustee, and the Public Trustee shall pay such money to the person entitled thereto.

[Clause 9 amended: Gazette 28 Jun 2011 p. 2555.]

10. Every authority for the payment of money out of court must be attested by a witness, whose residence and description must be added to his attestation.

11. Each sum paid into court shall, as regards its payment out of court, be deemed when the time for payment out arrives, to be money standing to the credit of the Supreme Court.

12. All payments out of court shall be made by the Accountant or Public Trustee as the case may be, in favour of the party claiming to receive the money on the production by him of a form or request signed by the party entitled to receive the money or his solicitor, and duly marked by the Principal Registrar as approved as set out in regulation 15. On the written authority of the party, the payment out may be made to his solicitor.

[Clause 12 amended: Gazette 14 Dec 1979 p. 3872; 26 Aug 1984 p. 4415.]

13. Whenever the order is required to be drawn in favour of any person not a solicitor of the Supreme Court, the Accountant or Public Trustee as the case may be, may require him to be identified by a solicitor. If

such person shall be represented in the cause or matter by a solicitor, the identifying solicitor must be such solicitor.

14. Where an order directs that money paid into court is to be invested, the Public Trustee shall make the investment.

15. (1) In all cases in which it is desired to pay money into court or to receive money out of court, a form of request signed by the party so desiring or his solicitor, shall be presented to the Principal Registrar and be by him examined, and if he shall be of opinion that such request may be legally complied with, he shall mark his approval thereof.

(2) The request so marked shall then be presented by such party or his solicitor to the Accountant by whom the money mentioned in such request shall be received, or (if it is not money which has been invested by the Public Trustee) paid out, as the case may require.

(3) The Accountant shall then indorse on the request a short note to the effect that the said money has been received or paid by him, as the case may be, and the request so indorsed shall be forthwith returned to the Central Office and filed there.

(4) If the money which it is desired to receive out of court has been invested by the Public Trustee, the request marked by the Principal Registrar shall be presented to the Public Trustee, who upon payment shall indorse the request accordingly and forthwith forward it to the Central Office to be filed there.

[Regulation 15 amended: Gazette 14 Dec 1979 p. 3872.]

16. The Principal Registrar shall furnish to the Accountant or Public Trustee, free of charge a copy of any document filed with the Principal Registrar, which the Accountant or Public Trustee may reasonably require for the purpose of carrying out his duties under this Schedule.

[Regulation 16 amended: Gazette 14 Dec 1979 p. 3872; 27 Feb 2018 p. 624.]

[Fourth Schedule deleted: Gazette 21 Feb 2007 p. 596.]

[Fifth Schedule deleted: Gazette 27 Jul 2001 p. 3895.]

[Sixth Schedule deleted: Gazette 16 Jul 1999 p. 3201.]

[Seventh Schedule deleted: Gazette 21 May 2004 p. 1712.]

Notes

This is a compilation of the *Rules of the Supreme Court 1971* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

Compilation table

Citation	Published	Commencement
Rules of the Supreme Court 1971	18 Nov 1971 p. 4397-758	14 Feb 1972 (see O. 1 r. 2(1))
Untitled rules	17 Dec 1971 p. 5266	14 Feb 1972 (see r. 1)
Untitled rules	7 Jun 1972 p. 1703	7 Jun 1972
Untitled rules	15 Jun 1973 p. 2247-52	15 Jun 1973
Untitled rules	10 Sep 1973 p. 3425-36	1 Oct 1973 (see r. 2)
Untitled rules	9 Nov 1973 p. 4162-6	Rules other than r. 5 and 6: 9 Nov 1973 (see r. 2(1)); r. 5 and 6: 1 Jan 1974 (see r. 2(2) and *Gazette* 14 Dec 1973 p. 4528)
Untitled rules	7 Dec 1973 p. 4488-9	1 Jan 1974 (see r. 2)
Untitled rules	29 Mar 1974 p. 1037-40	15 Apr 1974 (see r. 2)
Untitled rules	29 Mar 1974 p. 1041-2 (erratum 5 Apr 1974 p. 1195)	29 Mar 1974
Supreme Court (Costs) Rules 1974	30 Aug 1974 p. 3242-3	30 Aug 1974 (see r. 1)
Untitled rules	10 Jan 1975 p. 50-5	1 Mar 1975 (see r. 2 and *Gazette* 14 Feb 1975 p. 505)
Untitled rules	23 May 1975 p. 1404	1 Jun 1975 (see r. 2)

Citation	Published	Commencement
Untitled rules	3 Oct 1975 p. 3769-71	1 Nov 1975 (see r. 2)
Untitled rules	19 Dec 1975 p. 4571-7	1 Jan 1976 (see r. 2)
Untitled rules	2 Apr 1976 p. 1039-41	2 Apr 1976 (see r. 2)
Untitled rules	14 May 1976 p. 1431	1 Jun 1976 (see r. 2)
Reprint of the *Rules of the Supreme Court 1971* dated 25 May 1976 (see *Gazette* 9 Aug 1976 p. 2725-3030) (includes amendments listed above except those in *Gazette* 14 May 1976)		
Untitled rules	27 Aug 1976 p. 3223-6	13 Sep 1976 (see r. 2)
Untitled rules	12 Nov 1976 p. 4275-7	17 Jun 1977 (see r. 2 and *Gazette* 17 Jun 1977 p. 1811)
Untitled rules	24 Jun 1977 p. 1914-16	1 Sep 1977 (see r. 2)
Untitled rules	7 Oct 1977 p. 3602-3	1 Nov 1977 (see r. 2)
Supreme Court (Costs) Rules 1978	13 Jan 1978 p. 117	13 Jan 1978 (see r. 2)
Untitled rules	23 Jun 1978 p. 2025-30	1 Aug 1978 (see r. 2)
Untitled rules	13 Oct 1978 p. 3698-704	Rules other than r. 3-5, 9-11: 13 Oct 1978 (see r. 2); r. 3-5 and 9-11: 1 Jan 1979 (see r. 2)
Supreme Court (Miscellaneous Amendments) Rules 1979	14 Dec 1979 p. 3869-76	11 Feb 1980 (see r. 1 and *Gazette* 8 Feb 1980 p. 383)
Supreme Court (Costs) Rules 1980	21 Mar 1980 p. 960-2	21 Mar 1980 (see r. 2)
Untitled rules	13 Jun 1980 p. 1719-22	1 Jul 1980 (see r. 2)
Untitled rules	18 Jul 1980 p. 2384-8	1 Aug 1980 (see r. 2 and *Gazette* 1 Aug 1980 p. 2537)
Untitled rules	1 Aug 1980 p. 2550-6	1 Aug 1980 (see r. 2)

Citation	Published	Commencement
Untitled rules	1 Aug 1980 p. 2558	1 Aug 1980 (see r. 2)
Reprint of the *Rules of the Supreme Court 1971* dated 11 May 1981 (see *Gazette* 11 Jun 1981 p. 1731-2046) (includes amendments listed above)		
Untitled rules	20 Nov 1981 p. 4724-9	20 Nov 1981 (see r. 2)
Untitled rules	2 Jul 1982 p. 2315-20	2 Jul 1982 (see r. 2)
Supreme Court (Costs) Rules 1982	2 Jul 1982 p. 2320-1	2 Jul 1982 [5] (see r. 1)
Untitled rules	30 Jul 1982 p. 2946-7	30 Jul 1982
Untitled rules	31 Mar 1983 p. 1090-1	20 Jun 1983 (see r. 2 and *Gazette* 3 Jun 1983 p. 1675)
Untitled rules	23 Sep 1983 p. 3797-8	23 Sep 1983
Untitled rules	20 Jan 1984 p. 129-34	20 Jan 1984 (see r. 2)
Untitled rules	30 Nov 1984 p. 3951-6	30 Nov 1984
Supreme Court (Costs) Rules 1985	15 Feb 1985 p. 583-7 (erratum 22 Feb 1985 p. 658)	15 Feb 1985(see r. 1)
Reprint of the *Rules of the Supreme Court 1971* as at 12 Dec 1985 (see *Gazette* 18 Mar 1986 p. 779-1179) (includes amendments listed above)		
Supreme Court (Costs) Rules No. 2 1985	13 Dec 1985 p. 4760-4 (erratum 3 Jan 1986 p. 11)	1 Jan 1986 (see r. 1)
Untitled rules	20 Jun 1986 p. 2040-5	20 Jun 1986
Rules of the Supreme Court 1971 Amendment Rules (No. 2) 1986	4 Jul 1986 p. 2280-6	4 Jul 1986 (see r. 3)
Rules of the Supreme Court 1971 Amendment Rules 1987	18 Dec 1987 p. 4456-7	1 Jan 1988 (see r. 3)
Supreme Court Amendment Rules 1988	1 Jul 1988 p. 2140-2	1 Jul 1988 (see r. 2 and *Gazette* 24 Jun 1988 p. 1995)

Citation	Published	Commencement
Supreme Court Amendment Rules 1989	15 Dec 1989 p. 4520	1 Jan 1990 (see r. 2)
Supreme Court Amendment Rules (No. 2) 1990	23 Feb 1990 p. 1153-6	23 Feb 1990
Supreme Court Amendment Rules 1990	30 Mar 1990 p. 1573-4	30 Mar 1990 (see r. 2)
Supreme Court Amendment Rules (No. 3) 1990	17 Aug 1990 p. 4071-8	1 Sep 1990 (see r. 2)
Supreme Court Amendment Rules (No. 7) 1990	9 Nov 1990 p. 5526	9 Nov 1990 (see r. 2)
Supreme Court Amendment Rules (No. 6) 1990	16 Nov 1990 p. 5698-9	16 Nov 1990 (see r. 2)
Supreme Court Amendment Rules (No. 8) 1990	30 Nov 1990 p. 5900-1	30 Nov 1990
Supreme Court Amendment Rules (No. 4) 1990	8 Feb 1991 p. 582-8	8 Mar 1991 (see r. 2 and Gazette 8 Mar 1991 p. 1029-30)
Supreme Court Amendment Rules 1991	5 Apr 1991 p. 1397-8	5 Apr 1991
Supreme Court Amendment Rules (No. 3) 1991	5 Apr 1991 p. 1398-401	5 Apr 1991
Supreme Court Amendment Rules (No. 2) 1991	19 Apr 1991 p. 1714-19	1 Jun 1991 (see r. 2 and *Gazette* 17 May 1991 p. 2455)
Supreme Court Amendment Rules (No. 4) 1991	7 Feb 1992 p. 676-93	7 Feb 1992
Supreme Court Amendment Rules (No. 6) 1991	28 Feb 1992 p. 995-8	28 Feb 1992
Supreme Court Amendment Rules 1992	5 Jun 1992 p. 2278-82	5 Jun 1992
Supreme Court Amendment Rules (No. 3) 1992	21 Aug 1992 p. 4121-4	1 Sep 1992 (see r. 2)
Supreme Court Amendment Rules (No. 4) 1992	30 Oct 1992 p. 5309-10	30 Oct 1992
Supreme Court Amendment Rules (No. 5) 1992	30 Oct 1992 p. 5310-11	30 Oct 1992
Supreme Court Amendment Rules (No. 6) 1992	26 Jan 1993 p. 823-30	26 Jan 1993
Supreme Court Amendment Rules 1993	26 Mar 1993 p. 1840-6	26 Mar 1993

Citation	Published	Commencement
Supreme Court Amendment Rules (No. 2) 1993	20 Apr 1993 p. 2103-4	20 Apr 1993
Supreme Court Amendment Rules (No. 3) 1993	29 Jun 1993 p. 3166-7	29 Jun 1993
Supreme Court Amendment Rules (No. 4) 1993	17 Sep 1993 p. 5054-61	17 Sep 1993
Supreme Court Amendment Rules (No. 6) 1993	1 Dec 1993 p. 6451-2	1 Dec 1993 (see r. 2 and *Gazette* 30 Nov 1993 p. 6439)
Supreme Court Amendment Rules 1994 [6]	1 Mar 1994 p. 784-93	1 Mar 1994
Supreme Court Amendment Rules (No. 4) 1994	28 Jun 1994 p. 3047-141	1 Aug 1994 (see r. 2)
Supreme Court Amendment Rules (No. 2) 1994	1 Jul 1994 p. 3238-9	1 Jul 1994
Supreme Court Amendment Rules (No. 3) 1994	22 Jul 1994 p. 3746-8	22 Jul 1994
Supreme Court Amendment Rules (No. 5) 1994	26 Aug 1994 p. 4410-13	26 Aug 1994
Supreme Court Amendment Rules (No. 7) 1994	26 Aug 1994 p. 4414-15	26 Aug 1994
Supreme Court Amendment Rules (No. 6) 1994	9 Sep 1994 p. 4630	9 Sep 1994
Supreme Court Amendment Rules (No. 8) 1994	11 Nov 1994 p. 5701-2	11 Nov 1994
Reprint of the *Rules of the Supreme Court 1971* as at 21 Nov 1994 (includes amendments listed above)		
Supreme Court Amendment Rules 1995	24 Jan 1995 p. 269-72	24 Jan 1995
Supreme Court Amendment Rules (No. 2) 1995	24 Jan 1995 p. 272-3	24 Jan 1995
Supreme Court Amendment Rules (No. 4) 1995	7 Jul 1995 p. 2819	7 Jul 1995
Supreme Court Amendment Rules (No. 5) 1995	24 Oct 1995 p. 4917-21	24 Oct 1995
Supreme Court Amendment Rules (No. 6) 1995	10 Nov 1995 p. 5246-7	10 Nov 1995
Supreme Court Amendment Rules 1996	9 Aug 1996 p. 3949-51	9 Aug 1996

Citation	Published	Commencement
Supreme Court Amendment Rules (No. 3) 1996	13 Sep 1996 p. 4568	7 Apr 1997 (see r. 2 and *Gazette* 18 Mar 1997 p. 1529)
Supreme Court Amendment Rules (No. 4) 1996	28 Oct 1996 p. 5671-712	1 Nov 1996 (see r. 2)
Supreme Court Amendment Rules (No. 2) 1997 [7]	1 Jul 1997 p. 3258-60	21 Jul 1997 (see r. 2 and correction in *Gazette* 4 Jul 1997 p. 3480)
Supreme Court Amendment Rules (No. 1) 1998	6 Mar 1998 p. 1177	6 Mar 1998
Supreme Court Amendment Rules (No. 2) 1998	6 Mar 1998 p. 1178	6 Mar 1998
Supreme Court Amendment Rules 1999	16 Jul 1999 p. 3187-200 (as amended 5 Nov 1999 p. 5632)	16 Jul 1999
Supreme Court Amendment Rules (No. 2) 1999	16 Jul 1999 p. 3201	8 Jan 2000 (see r. 2 and *Gazette* 7 Jan 2000 p. 19)
Supreme Court Amendment Rules (No. 5) 1999	5 Nov 1999 p. 5625-33	5 Nov 1999
Supreme Court Amendment Rules (No. 4) 1999	26 Nov 1999 p. 5903-5	26 Nov 1999 (see r. 2)
Supreme Court Amendment Rules 2000	10 Mar 2000 p. 1121	10 Mar 2000
Supreme Court Amendment Rules (No. 2) 2000	8 May 2000 p. 2159-232	1 Jun 2000 (see r. 2)
Supreme Court Amendment Rules (No. 3) 2000	30 Jun 2000 p. 3417-19	30 Jun 2000
Reprint of the *Rules of the Supreme Court 1971* as at 1 Dec 2000 (includes amendments listed above)		
Supreme Court Amendment Rules (No. 5) 2000	29 Dec 2000 p. 7917-19	5 Feb 2001 (see r. 2 and *Gazette* 2 Jan 2001 p. 7)
Supreme Court Amendment Rules (No. 2) 2001	23 Jan 2001 p. 555-61	23 Jan 2001
Supreme Court Amendment Rules (No. 3) 2001	23 Jan 2001 p. 561-3	23 Jan 2001
Supreme Court Amendment Rules 2001	2 Feb 2001 p. 697-701	2 Feb 2001

Citation	Published	Commencement
Supreme Court Amendment Rules (No. 7) 2001	29 May 2001 p. 2701-3	30 Jun 2001 (see r. 2)
Supreme Court Amendment Rules (No. 5) 2001	27 Jul 2001 p. 3895-6	27 Jul 2001
Supreme Court Amendment Rules (No. 8) 2001	5 Oct 2001 p. 5474-5	5 Oct 2001
Supreme Court Amendment Rules 2002	12 Apr 2002 p. 1903-4	12 Apr 2002
Supreme Court Amendment Rules (No. 2) 2002	27 Sep 2002 p. 4829-34	27 Sep 2002
Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 36	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and *Gazette* 30 Jun 2003 p. 2579)
Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 16	15 Aug 2003 p. 3685-92	15 Sep 2003 (see r. 2)
Supreme Court Amendment Rules 2004	21 May 2004 p. 1712	1 Jun 2004 (see r. 2)
Supreme Court Amendment Rules (No. 4) 2004	10 Aug 2004 p. 3185	10 Aug 2004
Reprint 6: The *Rules of the Supreme Court 1971* as at 15 Oct 2004 (includes amendments listed above)		
Courts and Legal Practice (Consequential Amendments) Regulations 2005 r. 12	19 Apr 2005 p. 1294-302	19 Apr 2005
Supreme Court Amendment Rules 2005	29 Apr 2005 p. 1791-6	2 May 2005 (see r. 2)
Supreme Court Amendment Rules (No. 2) 2005	29 Apr 2005 p. 1797-802	2 May 2005 (see r. 2)
Supreme Court Amendment Rules 2007	21 Feb 2007 p. 531-96	1 Mar 2007 (see r. 2)
Supreme Court Amendment Rules 2008	22 Feb 2008 p. 629-56	Pt. 1: 22 Feb 2008 (see r. 2(a)); Pt. 2: 23 Feb 2008 (see r. 2(b)); Pt. 3: 25 Feb 2008 (see r. 2(c))
Reprint 7: The *Rules of the Supreme Court 1971* as at 11 Apr 2008 (includes amendments listed above)		

Citation	Published	Commencement
Supreme Court Amendment Rules 2009	6 Feb 2009 p. 243-5	r. 1 and 2: 6 Feb 2009 (see r. 2(a)); Rules other than r. 1 and 2: 1 Mar 2009 (see r. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Supreme Court Amendment Rules (No. 2) 2009	3 Jul 2009 p. 2682-700 (printer's correction 7 Jul 2009 p. 2719)	Pt. 1: 3 Jul 2009 (see r. 2(a)); Pt. 3: 4 Jul 2009 (see r. 2(c)); Pt. 2: 1 Nov 2010 (see r. 2(b) and the *Hague Convention on the Service Abroad of Judicial Extrajudicial Documents in Civil or Commercial Matters 1965*)
Supreme Court Amendment Rules (No. 3) 2009	22 Dec 2009 p. 5273-4	1 Jan 2010 (see r. 2 and *Gazette* 31 Dec 2009 p. 5327)
Supreme Court Amendment Rules 2010	28 Jul 2010 p. 3433-90	Pt. 1: 28 Jul 2010 (see r. 2(a)); Rules other than Pt. 1: 29 Jul 2010 (see r. 2(b))
Supreme Court Amendment Rules 2011	28 Jun 2011 p. 2551-63	r. 1 and 2: 28 Jun 2011 (see r. 2(a)); Rules other than r. 1 and 2: 12 Jul 2011 (see r. 2(b))
Reprint 8: The *Rules of the Supreme Court 1971* as at 15 Jul 2011 (includes amendments listed above)		
Supreme Court Amendment Rules 2012	12 Jun 2012 p. 2445-53	r. 1 and 2: 12 Jun 2012 (see r. 2(a)); Rules other than r. 1 and 2: 26 Jun 2012 (see r. 2(b))
Supreme Court Amendment Rules (No. 3) 2012	3 Aug 2012 p. 3748-56	r. 1 and 2: 3 Aug 2012 (see r. 2(a)); Rules other than r. 1 and 2: 11 Oct 2013 (see r. 2(b) and Cwlth Legislative Instrument No. F2013L01445 registered 26 Jul 2013)
Supreme Court Amendment Rules (No. 2) 2013	15 Mar 2013 p. 1205-7	r. 1 and 2: 15 Mar 2013 (see r. 2(a)); Rules other than r. 1 and 2: 7 Aug 2013 (see r. 2(b) and *Gazette* 6 Aug 2013 p. 3677)

Citation	Published	Commencement
Supreme Court Amendment Rules 2013 [8]	23 Apr 2013 p. 1590-7	r. 1 and 2: 23 Apr 2013 (see r. 2(a)); Rules other than r. 1 and 2: 7 May 2013 (see r. 2(b))
Supreme Court Amendment Rules (No. 4) 2013	3 May 2013 p. 1718-19	r. 1 and 2: 3 May 2013 (see r. 2(a)); Rules other than r. 1 and 2: 17 May 2013 (see r. 2(b))
Supreme Court Amendment Rules (No. 3) 2013	17 Dec 2013 p. 6231-7	r. 1 and 2: 17 Dec 2013 (see r. 2(a)); Rules other than r. 1 and 2: 18 Dec 2013 (see r. 2(b))
Reprint 9: The *Rules of the Supreme Court 1971* as at 4 Apr 2014 (includes amendments listed above)		
Supreme Court Amendment Rules (No. 2) 2014	26 Sep 2014 p. 3559-62	r. 1 and 2: 26 Sep 2014 (see r. 2(a)); Rules other than r. 1 and 2: 27 Sep 2014 (see r. 2(b))
Supreme Court Amendment Rules 2014	19 Dec 2014 p. 4845-9	r. 1 and 2: 19 Dec 2014 (see r. 2(a)); Rules other than r. 1 and 2: 27 Apr 2015 (see r. 2(b) and *Gazette* 17 Apr 2015 p. 1371)
Supreme Court Amendment Rules (No. 4) 2015	4 Sep 2015 p. 3696-8	r. 1 and 2: 4 Sep 2015 (see r. 2(a)); Rules other than r. 1 and 2: 18 Sep 2015 (see r. 2(b))
Supreme Court Amendment Rules (No. 3) 2015	13 Nov 2015 p. 4644-55	r. 1 and 2: 13 Nov 2015 (see r. 2(a)); Rules other than r. 1 and 2: 27 Nov 2015 (see r. 2(b))
Supreme Court Amendment Rules 2016	16 Nov 2016 p. 5185-216	r. 1 and 2: 16 Nov 2016 (see r 2(a)); Rules other than r. 1 and 2: 23 Nov 2016 (see r. 2(b))
Supreme Court (Arbitration) Rules 2016 r. 26	20 Dec 2016 p. 5819-85	3 Jan 2017 (see r. 2(b))
Supreme Court Amendment (Subpoenas) Rules 2017	24 May 2017 p. 2565-607	Pt. 1: 24 May 2017 (see r. 2(a)); Rules other than Pt. 1: 7 Jun 2017 (see r. 2(b))

Citation	Published	Commencement
Supreme Court Amendment Rules 2017	30 Jun 2017 p. 3575-6	r. 1 and 2: 30 Jun 2017 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jul 2017 (see r. 2(b))
Supreme Court Rules Amendment Rules 2017 Pt. 2	16 Aug 2017 p. 4391-427	Pt. 2 (other than r. 30): 30 Aug 2017 (see r. 2(c)); r. 30: 4 Sep 2017 (see r. 2(b))
Supreme Court Amendment Rules (No. 3) 2017	1 Dec 2017 p. 5732-3	r. 1 and 2: 1 Dec 2017 (see r. 2(a)); Rules other than r. 1 and 2: 2 Dec 2017 (see r. 2(b))
Supreme Court Amendment Rules 2018	27 Feb 2018 p. 551-624	r. 1 and 2: 27 Feb 2018 (see r. 2(a)); Rules other than r. 1 and 2: 1 Mar 2018 (see r. 2(b))
Supreme Court Amendment Rules (No. 2) 2018	29 Jun 2018 p. 2437-8	r. 1 and 2: 29 Jun 2018 (see r. 2(a)); Rules other than r. 1 and 2: 30 Jun 2018 (see r. 2(b))
Supreme Court Amendment Rules (No. 3) 2018	28 Aug 2018 p. 2991-2	r. 1 and 2: 28 Aug 2018 (see r. 2(a)); Rules other than r. 1 and 2: 1 Sep 2018 (see r. 2(b) and *Gazette* 17 Aug 2018 p. 2894)
Supreme Court Amendment Rules (No. 3) 2019	31 Dec 2019 p. 4677-8	r. 1 and 2: 31 Dec 2019 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jan 2020 (see r. 2(b))
Supreme Court Amendment Rules (No. 5) 2020	SL 2020/228 27 Nov 2020	r. 1 and 2: 27 Nov 2020 (see r. 2(a)); Rules other than r. 1 and 2: 28 Nov 2020 (see r. 2(b))
Supreme Court Amendment Rules (No. 2) 2020	SL 2020/242 18 Dec 2020	r. 1 and 2: 18 Dec 2020 (see r. 2(a)); Rules other than r. 1 and 2: 19 Dec 2020 (see r. 2(b))
Supreme Court Rules Amendment (Court of Appeal) Rules 2021 Pt. 3	SL 2021/34 30 Mar 2021	3 May 2021 (see r. 2(b))

Citation	Published	Commencement
Supreme Court Amendment Rules (No. 2) 2021	SL 2021/65 1 Jun 2021	r. 1 and 2: 1 Jun 2021 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jul 2021 (see r. 2(b) and SL 2021/54 cl. 2(a))
Supreme Court Amendment Rules 2022	SL 2022/53 6 May 2022	r. 1 and 2: 6 May 2022 (see r. 2(a)); Rules other than r. 1 and 2: 20 May 2022 (see r. 2(b))
Supreme Court Rules Amendment (Legal Profession) Rules 2022 Pt. 4	SL 2022/74 14 Jun 2022	1 Jul 2022 (see r. 2(b) and SL 2022/113 cl. 2)
Supreme Court Amendment Rules 2023	SL 2023/16 10 Mar 2023	r. 1 and 2: 10 Mar 2023 (see r. 2(a)); Rules other than r. 1 and 2: 25 Mar 2023 (see r. 2(b) and SL 2023/21 cl. 2)

~~Uncommenced provisions table~~

~~To view the text of the uncommenced provisions see *Subsidiary legislation as made* on the WA Legislation website.~~

~~Citation~~	~~Published~~	~~Commencement~~
Supreme Court Amendment Rules 2024 ~~r. 3-18~~	SL 2024/38 26 Mar 2024	r. 1 and 2: 26 Mar 2024 (see r. 2(a)); Rules other than r. 1 and 2: 9 Apr 2024 (see r. 2(b))

Other notes

[1] Formerly referred to *The Electoral Rules of 1908*, the citation of which was changed to the *Electoral Rules 1908* by the *Electoral Amendment Rules 2009* r. 4. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

[2] This rule is merely declaratory of an Order in Council gazetted 16 Sep 1983 whereby the vacations of the Supreme Court are regulated.

[3] Formerly referred to *The Partnership Act 1895*, the short title of which was changed to the *Partnership Act 1895* by the *Statutes (Repeals and Minor Amendments) Act 2003* s. 144. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

[4] Formerly referred to the *Inheritance (Family and Dependants Provision) Act 1972*, the short title of which was changed to the *Family Provision Act 1972* by the *Inheritance (Family and Dependants Provision) Amendment Act 2011* s. 4. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

[5] The commencement date of 1 Jul 1982 that was specified was before the date of gazettal.

[6] The *Supreme Court Amendment Rules 1994* r. 14 is a transitional provision that has no further effect.

[7] Disallowed on 10 Mar 1998, see *Gazette* 13 Mar 1998 p. 1389.

[8] Disallowed on 29 Oct 2013, see *Gazette* 1 Nov 2013 p. 4910.

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