



Western Australia

Rules of the Supreme Court 1971

Reprinted as at 1 December 2000

Western Australia

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Western Australia

**Reprinted under the
Reprints Act 1984 as
at 1 December 2000**

Supreme Court Act 1935

Rules of the Supreme Court 1971

Order 1

Application, elimination of delay and forms

[Heading inserted in Gazette 26 March 1993 p.1840.]

1. Short title

These Rules may be cited as the *Rules of the Supreme Court 1971*¹.

2. Commencement, repeal and saving

- (1) These Rules shall take effect on 14 February 1972, and on and from that date the Rules set out in the First Schedule shall be revoked.
- (2) The revocation effected by paragraph (1) does not affect the validity of any proceedings taken under the rules of Court so revoked.
- (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.

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) Subject to the provisions of paragraph (2A), 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. <i>deleted</i>]	
2.	Non-contentious or common form probate business.	<i>Administration Act 1903</i> , s. 144. <i>Supreme Court Act 1935</i> , s. 167. <i>Public Trustee Act 1941</i> , s. 65.
3.	Proceedings in the Supreme Court to which the <i>Supreme Court (Mental Health) Rules 1965</i> , relate.	<i>Mental Health Act 1962</i> , s. 87.
4.	Proceedings in the Court of Disputed Returns to which <i>The Electoral Rules of 1908</i> apply.	<i>Electoral Act 1907</i> , s. 173.
5.	Proceedings to which <i>The Criminal Practice Rules</i> relate.	<i>The Criminal Code</i> , s. 747.
(2A)	The provisions of Order 83A and of the Fifth Schedule shall apply to and in relation to proceedings of the kinds referred to in paragraphs 1, 2 and 3 of the Table contained in paragraph (2).	
(3)	These Rules, save as expressly provided, shall not apply to —	
	(a) any criminal proceedings;	
	(b) any proceedings to which the <i>Matrimonial Causes and Personal Status Rules 1949</i> ² , as amended, apply;	
	(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 paragraphs (2) and (3), nothing in those paragraphs shall be taken as affecting any provision of any rules (whether made under the Act or any other Act) by virtue of which the <i>Rules of the Supreme Court</i> or any provisions thereof are applied in relation to any of those proceedings.	

[Rule 3 amended in Gazette 10 September 1973 p.3428;
28 June 1994 p.3049; 8 May 2000 p.2161.]

r. 3A

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 in Gazette 28 October 1996 p.5673.]

4. Definitions

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

“**Accountant**” means the Accountant, Crown Law Department³;

“**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;
- (b) high commissioner;
- (c) minister;
- (d) head of mission;
- (e) commissioner;
- (f) charge d’affaires;
- (g) counsellor, secretary or attache at an embassy, high commissioner’s office, legation or other post;
- (h) consul-general;
- (i) consul;
- (j) vice-consul;
- (k) trade commissioner; and
- (l) consular agent;

“**Case Management Registrar**” means a Registrar appointed as such by the Chief Justice;

“**Cause Book**” means the book kept in the Central Office 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;

“**Costs**” includes fees to counsel, charges, disbursements, expenses and remuneration;

“**Diplomatic agent**” means an ambassador, envoy, minister, charge d’affaires, or secretary of an embassy or a legation;

“**Folio**” means 72 words, each figure being counted as one word;

“**Master**” means a Master of the Supreme Court, and includes an Acting Master;

“**Officer**” means an officer of the Supreme Court;

“**Originating summons**” means every summons other than a summons in a pending cause or matter;

“**Practitioner**” has the same meaning as in the *Legal Practitioners Act 1893*;

“**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;

“Taxing Officer” includes a Registrar, and any other officer of the Court having power to tax costs;

“The Act” means the *Supreme Court Act 1935*;

“to file” means to file in the Central Office, and **“file”, “filed”** and **“filing”** have corresponding meanings;

“Trial” includes hearing;

“Writ” means a writ of summons.

- (2) In these Rules, unless the context otherwise requires, **“the Court”** means the Supreme Court or any one or more Judges thereof, whether sitting in court or in chambers, or a Master: but this provision shall not be taken as affecting any provision of these Rules, and in particular Order 60, by virtue of which the authority and jurisdiction of the Masters is defined and regulated.

*[Rule 4 amended in Gazette 14 December 1979 p.3869;
30 November 1984 pp.3951-2; 28 October 1996 p.5674.]*

4A. Elimination of delays

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 in Gazette 26 March 1993 p.1840.]

4B. System of case flow management

- (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;
 - (b) disposing efficiently of the business of the Court;
 - (c) maximising the efficient use of available judicial and administrative resources; and
 - (d) facilitating the timely disposal of business at a cost affordable by parties.
- (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 paragraph (1).

[Rule 4B inserted in Gazette 26 March 1993 pp.1840-1.]

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 Registrar in writing forthwith.

[Rule 4C inserted in Gazette 26 March 1993 p.1841.]

5. Construction of references to Orders, Rules, etc.

- (1) Unless the context otherwise requires, any reference in these Rules to a specified Order, Rule or Schedule is a reference to that Order or rule of, or that Schedule to these Rules, and any reference to a specified Rule, paragraph or subparagraph is a reference to that Rule of the Order, that paragraph of the rule or that subparagraph of the paragraph, in which the reference occurs.
- (2) Any reference in these Rules to anything done under a rule or these Rules includes a reference to the same thing done before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement of that rule.
- (3) Except where the context otherwise requires any reference in these Rules to any Act shall be construed as a reference to that Act as amended, extended or applied by or under any other Act.

6. Forms

- (1) The forms in the Second Schedule 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 the Second Schedule to these Rules, and as a direction to use that Form for the purpose indicated by the Rule.
- (2) Where no form is prescribed for any document required for any purpose of these Rules or by the practice of the Court, the senior Master may give directions with respect to the form to be used, and subject to any such direction, the appropriate form as printed in the Masters' Practice Forms in "The Supreme Court Practice" (commonly known as "The White Book") should be used.

[Rule 6 amended in Gazette 30 November 1984 p.3952.]

7. Electronic documents and communications

- (1) The Court may give directions to facilitate —
 - (a) the preparation, filing, service and exchange of electronic documents relating to proceedings before the Court;
 - (b) the preparation and issue of electronic documents by the Court; and
 - (c) the conduct of proceedings before the Court by means of the electronic communication of written information between the Court and parties to the proceedings.
- (2) The directions may be given —
 - (a) by the Chief Justice in practice directions applicable to proceedings generally or to a particular class of proceeding; or
 - (b) by a Judge or the Full Court in particular proceedings.
- (3) The directions may vary the operation of, or allow non-compliance with, these Rules.
- (4) A direction given under this Rule has effect as if it were part of these Rules.
- (5) Nothing done under such a direction shall be treated as an irregularity for the purposes of Order 2.

[Rule 7 inserted in Gazette 5 November 1999 pp.5625-6.]

Order 2

Effect of non-compliance

1. Non-compliance with Rules

*E. O.2, R.1. Cf. W.A. O.LXX, R.1.*⁴

- (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 paragraph (3) the Court may, on the ground that there has been such a failure as is mentioned in paragraph (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.

2. Application to set aside for irregularity

Cf. E. O.2, R.2. Cf. W.A. O.LXX, R.1.

- (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. “Month” means calendar month

Cf. E. O.3, R.1.

Without prejudice to section 4 of the *Interpretation Act 1918*⁵, 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.

2. Reckoning periods of time

Cf. W.A. O.LXIV, RR. 2, 3.

- (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 December and 15 January excluded from time for filing, etc., of pleading

Ib. R.5.

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 in Gazette 9 November 1973 p.4164.]

4. Time expires on day on which Central Office closed

Ib. R.4.

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.

5. Extension, etc., of time

Cf. E. O.3, R.5. Cf. W.A. O.LXIV, R.1.

- (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 paragraph (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.
- (4) In this Rule references to the Court shall be construed as including references to the Full Court.

6. Extension where security ordered

W.A. O.LXIV, R.6.

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.

r. 7

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

Cf. W.A. O.LXIV, R.7.

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. Repealed in Gazette 20 June 1986 p.2040.]

Order 4
Mode of commencing proceedings: applications in pending proceedings

1. Commencement of civil proceedings

Cf. E. O.5, R.1.

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 in Gazette 28 October 1996 p.5674.]

3. Right to sue in person

Cf. E. O.5, R.6.

- (1) Subject to paragraph (2) and to Order 70 Rule 2, any person (whether or not he 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.

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. Writs for service out of the State

A writ to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction shall be in Form No. 3. Such notice shall be in accordance with Form No. 4.

3. Place of trial to be shown

Cf. W.A. O.XX, R.4.

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

Cf. W.A. O.V., R.2.

Writs shall be prepared by the plaintiff or his solicitor.

6. Sealing of writ

Ib. R.3.

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

7. Copy to be left with officer

Cf. W.A. O.V, R.4.

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.

8. Copy to be filed

Ib. R.5.

The officer receiving such copy shall file it and an entry of the filing thereof shall be made in a book to be called the Cause Book, which shall be in such form and kept in such manner as the Chief Justice may from time to time direct, and the action shall be distinguished by the date of the year and a number.

9. Writs for service out of the State

Cf. S.A. O.2, R.3.

A writ for service out of the jurisdiction or of which notice is to be given out of the jurisdiction shall not be issued without the leave of the Court, unless the writ is to be served under the *Service and Execution of Process Act 1992* of the Commonwealth.

[Rule 9 amended in Gazette 1 March 1994 p.784.]

10. All writs to be tested

Cf. W.A. O.II, R.7. Cf. Vic. O.2, R.6.

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.

r. 11

11. Time for appearance to be stated in writ

Cf. W.A. O.XII, R.2.

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 kilometres from Perth	10 days.
300 kilometres but less than 600 kilometres from Perth	16 days.
600 kilometres and above 600 kilometres	21 days.
(2) Outside the State but within the Commonwealth of Australia	30 days.
(3) Outside the Commonwealth of Australia	Such time as shall be fixed by the Court.

In the computation of the times prescribed by this Rule, the day of service shall be excluded.

*[Rule 11 amended in Gazette 7 December 1973 p.4488;
14 December 1979 p.3869.]*

Order 6

Indorsement of claim: other indorsements

1. Indorsement of claim

Cf. E. O.6, R.2. Cf. Vic. O.3, R.1.

- (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 paragraph (1) the defendant may apply before appearance to set aside or amend the writ or for particulars.

2. Actions for libel

Cf. E. O.82, R.2. Cf. Vic. O.3, R.7.

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

3. Indorsement of statement of claim

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 libel, slander, 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.

r. 4

4. Notice as to stay of proceedings

Cf. W.A. O.III. R.7. Cf. E. O.6, R.2.

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

Cf. E. O.6, R.3(1). Cf. Vic. O.3, R.3.

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. Indorsement of claim for account

Ib. R.6.

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. Address where plaintiff sues by solicitor

Cf. Vic. O.4, R.1.

- (1) The solicitor of a plaintiff suing by a solicitor shall indorse upon the writ or notice in lieu of the writ before it is issued, the address of the plaintiff and also his own name and place of

business which, if that place is not more than 66 kilometres from the Supreme Court at Perth, shall be his address for service. If his place of business is more than 66 kilometres from the said Court he shall also indorse on the writ or notice another place to be his address for service which shall not be more than 66 kilometres from the said Court. All documents not required by these Rules to be served personally may be left for the solicitor for the plaintiff at his address for service.

- (2) Where any such solicitor is only agent of another solicitor, he shall add to his own name and place of business the name and place of business of the principal solicitor.

*[Rule 7 amended in Gazette 7 December 1973 p.4489;
31 March 1983 p.1090.]*

8. Where plaintiff sues in person

Cf. Vic. O.4, R.2.

A plaintiff suing in person shall indorse upon the writ or notice in lieu of the writ before it is issued, his place of residence, his occupation, and a place to be his address for service, which shall not be more than 66 kilometres from the Supreme Court at Perth, where all documents not required by these Rules to be served personally may be left for him.

*[Rule 8 amended in Gazette 10 January 1975 p.50;
31 March 1983 p.1090.]*

9. Proceedings other than by writ

Ib. R.4.

In all cases where proceedings are commenced otherwise than by writ, Rules 7 and 8 apply to the document by which such proceedings are originated as if it were a writ.

10. Document not to be filed without address for service

W.A. O.IV, R.4.

No document required to be indorsed with an address for service shall be received unless it complies with the requirements of these Rules.

11. Address indorsed to be address for service until change notified

Ib. R.5.

- (1) When an address for service has been given in accordance with these Rules, that address shall be the address for service of the party until a notice has been filed and served in accordance with paragraph (2).
- (2) A party shall be at liberty at any time without leave, to change his address for service by notice of such change and of another address for service. The notice shall be given by filing the same in the Central Office, and serving a copy of such notice upon the opposite party. Such notice may be embodied in any notice of change of solicitor under Order 8.

Order 7

Duration and renewal of writ: concurrent writs

1. Duration and renewal of writ

Cf. E. O.6, R.8. Cf. W.A. O.VIII, R.1.

- (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. Evidence of extension of validity of writ

Cf. W.A. O.VIII, R.2.

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

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commencement of the action as of the date of the original writ, for all purposes.

3. Concurrent writs

Cf. E. O.6, R.6.

- (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 prejudice to the generality of paragraph (1) a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction, and a writ which, or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service 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.

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 issue a summons (to a hearing at least 7 days after it is issued) to the plaintiff to 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 in Gazette 28 October 1996 pp.5674-5.]

Order 8

Disclosure by solicitors: change of solicitors

1. Solicitor to declare whether writ issued by his authority

Cf. Vic. O.7, R.1.

- (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

Cf. W.A. O.VII, R.2.

- (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 in the Central Office, 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.

3. Notice of change of agent

Cf. E. O.67, R.2.

- (1) Where a solicitor for whom some other solicitor is acting as agent in a cause or matter changes the solicitor so acting, notice of the change must be given, and Rule 2(1) shall apply in relation to a notice of change of agent as it applies in relation to a notice of change of solicitor.
- (2) The solicitor giving the notice must serve on every party to the cause or matter (not being the party for whom he is acting or a party in default as to entry of appearance) and on the solicitor formerly acting as agent a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

4. Notice of appointment of solicitor

Cf. E. O.67, R.3.

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 in the Central Office 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.

5. Notice of intention to act in person

Cf. E. O.67, R.4.

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 except that the notice of intention to act in person must contain an address for service of the party giving it.

6. Removal of solicitor from the record

Cf. E. O.67, R.5.

- (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 in the Central Office a certificate signed by him or his solicitor that the order has been duly served as aforesaid.

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

Cf. E. O.67, R.6.

- (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 in the Central Office a certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to the foregoing 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) 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 paragraph (1).

[Rule 7 amended in Gazette 15 June 1973 p.2247; 23 May 1975 p.1404.]

8. Effect of order

W.A. O.VII, R.4(2).

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

9. Address for service of party whose solicitor is removed

Cf. E. O.67, R.7.

Where —

- (a) an order is made under Rule 6, or

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- (b) an order is made under Rule 7, and the applicant for that order has complied with Rule 7(1),

then unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate relates either appoints another solicitor and complies with Rule 4, or being entitled to act in person, gives notice of his intention so to do and complies with Rule 5, his last known address or such other address as on ex parte application may be ordered by the Court or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

10. “Address for Service”

Cf. Vic. O.7, R.6.

In this Order subject to Rule 9, the expression “**address for service**” means the address for service required by Orders 6 and 12.

11. Solicitor not to act for adverse parties

Cf. Vic. O.7, R.7.

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. Practitioner or clerk not to be security

Ib. R.8.

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

Order 9

Service of originating process: general provisions

1. General provisions

Cf. E. O.10, R.1.

- (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 duly served on a defendant otherwise than by virtue of paragraph (2) or (3), then subject to Order 10 Rule 9(9), unless within 3 days after service the person serving it indorses on the sealed copy of the writ the following particulars, that is to say, the day of the week and date on which it was served, where it was served, the person on whom it was served, and, where he is not the defendant, the capacity in which he was served, the plaintiff in the action begun by the writ shall not be entitled to enter final or interlocutory judgment against the defendant in default of appearance or in default of defence.

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2. Service of writ on agent of oversea principal

E. O.10, R.2.

- (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. Service of writ in pursuance of contract

Ib. R.3.

- (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 paragraph (2) be deemed to have been duly served on the defendant.

- (2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ, or notice thereof, out of the jurisdiction has been granted under Order 10 Rule 1 or 2.

4. Service of writ in certain actions for possession of land

Cf. W.A. O.IX, R.9. Cf. E. O.10, R.4.

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.

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5. Service of originating summons, petition and notice of motion

lb. R.5.

The foregoing Rules of this Order 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.

Order 10

Service out of the jurisdiction

1A. Application

- (1) Rules 9 to 11 shall not apply to the service of process in a foreign country which is a party to the Hague Convention.
- (2) This Order does not apply to any service of process to which the *Service and Execution of Process Act 1992* of the Commonwealth applies.

[Rule 1A inserted in Gazette 7 February 1992 p.676; amended in Gazette 1 March 1994 p.785.]

1. When service out of jurisdiction is permissible

Cf. W.A. O.XI. R.1. Cf. E. O.11, R.1.

- (1) Service of a writ or notice of a writ out of the jurisdiction is permissible with the leave of the Court whenever —
 - (a) the subject matter of the action, so far as it concerns the party to be served, is —
 - (i) land (with or without rents or profits) or other property situate within the State, or 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 action;
 - (c) in the action relief is sought against a person domiciled or ordinarily resident within the jurisdiction;

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- (d) the action 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 is for any relief or remedy which might be obtained in any such action as aforesaid;
- (e) the action is one brought to enforce, rescind, dissolve, annul, or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being in either case a contract —
 - (i) made within the jurisdiction; or
 - (ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
 - (iii) which by its terms or implications is governed by the law of Western Australia;

Cf. E. O.11, R.(1)(g).

- (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;

Cf. W.A. O.XI, R.1(f).

- (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;

Ib. R.1(g).

- (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;

Ib. R.1(h).

- (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;

Cf. Vic. O.11, R.1(h).

- (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 subparagraph (e)) any personal judgment or order for payment of any moneys due under the mortgage;

Cf. W.A. O.XI, R.1(i).

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

Cf. Vic. O.11, R.1(i).

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

2. Service out of the jurisdiction in certain actions in contract

E. O.11, R.2.

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, subject to Rule 3, grant leave for service out of the jurisdiction of the writ or notice of the writ, by which an action in respect of the contract is begun.

3. Notice of writ

Cf. E. O.11, R.3. Cf. W.A. O.XI, R.5.

Unless service is to be effected within the Commonwealth of Australia, leave granted under Rule 1 or 2 shall be leave for service out of the jurisdiction of notice of the writ and not the writ itself.

4. Application for leave

Cf. E. O.11, R.4.

- (1) An application for the grant of leave under Rule 1 or 2 shall be supported by an affidavit stating the grounds on which the application is made and that, in the deponent’s belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is, or probably may be found.
- (2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

[Rule 4 amended in Gazette 15 June 1973 p.2247.]

5. Time for appearance

Cf. W.A. O.XI, R.4.

Where service is to be effected outside the Commonwealth of Australia, the order giving leave to serve notice of a writ out of the jurisdiction shall limit a time within which the defendant to be served must enter an appearance, and the Court in fixing that time shall have regard to the place or country where or within which the notice of the writ is to be served.

6. Service of notice

Cf. Vic. O.11, R.5.

Where leave is given under this Order to serve notice of a writ out of the jurisdiction, the notice shall subject to any direction given by the Court as to the manner in which such notice shall be served or brought to the notice of the defendant, be served in the manner in which writs are served.

7. Service of originating summons and other documents

Cf. W.A. O.XI, R.11. Cf. E. O.11, R.9.

The Court may allow service outside the jurisdiction of any originating process other than a writ, or of any summons, order, or notice in any proceedings duly instituted, whether by writ of summons or otherwise, and the provisions of Rules 3, 4, 5, and 6 of this Order shall apply, *mutatis mutandis*, to such service.

8. Saving of existing practice

W.A. O.XI, R.11(4).

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

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existence of the proceedings, with a view to such person having an opportunity of claiming, opposing, or otherwise intervening.

9. Service abroad through foreign governments, judicial authorities, and consuls

Cf. E. O.11, R.6.

- (1) This Rule does not apply to service in —
 - (a) the United Kingdom;
 - (b) any Commonwealth country mentioned in section 1(3) of the *British Nationality Act 1948* of the United Kingdom;
 - (c) any British possession.
- (2) Where in accordance with these Rules leave is given to serve notice of a writ on a defendant in any foreign country with which a Convention in that behalf has been or shall be made and extended to the Commonwealth of Australia or the State of Western Australia, the notice may be served —
 - (a) through the judicial authorities of that country; or
 - (b) through a British or Australian diplomatic or consular agent in that country (subject to any provision of the Convention as to the nationality of persons who may be so served).
- (3) Where notice of a writ is to be served on a defendant in a country with which a Convention has not been made, the notice may be served —
 - (a) through the government of that country, if the government is willing to effect service; or
 - (b) through a British or Australian diplomatic or consular agent in that country except where service through such an authority is contrary to the law of that country.
- (4) Where a person wishes to serve notice of a writ by a method mentioned in paragraph (2) or (3) he shall lodge in the Central

Office a request for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.

- (5) Every copy of a notice lodged under paragraph (4) shall be accompanied by a translation of the notice 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 paragraph does not apply where the copy of the notice 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 paragraph (5) shall be certified by the person making it to be a correct translation, and the certificate shall state his full name and address and his qualifications for making the translation.
- (7) The document to be served shall be sealed with the seal of the Supreme Court for use out of the jurisdiction and shall be forwarded by the Principal Registrar to the Attorney General for Western Australia for transmission through the diplomatic channel to the foreign country.
- (8) An official certificate transmitted to the Court through the diplomatic channel by the British or Australian diplomatic or consular agent, or by the 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 an affidavit of service within the requirements of these Rules in that behalf. Any document purporting to be such a certificate shall, until the contrary is proved, be deemed to be such a certificate.

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

[Rule 9 amended in Gazette 14 December 1979 p.3869.]

10. Service abroad: general and saving provisions

Cf. E. O.11, R.5.

- (1) Subject to Rule 9(9) and to the following provisions of this Rule Order 9 Rule 1 and Order 72 Rule 4 shall apply in relation to the service of a writ or notice of a writ, notwithstanding that the writ or notice is to be served out of the jurisdiction.
- (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 or notice of a writ which is to be served out of the jurisdiction —
- (a) need not be served personally on the person required to be served, if it is served on him in accordance with the law of the country in which service is effected; and
 - (b) need not be served by the plaintiff or his agent if it is served by a method provided for by Rule 9.

W.A. O.XI, R.9.

- (4) Rule 9 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Supreme Court and which is not expressly excluded by the Convention.

11. Undertaking to pay expenses of service

Cf. E. O.11, R.8.

Every request lodged 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.

Order 11

Service of foreign process

1A. Application

This Order shall not apply to service of foreign legal process pursuant to a request from a competent authority in a foreign country which is a party to the Hague Convention.

[Rule 1A inserted in Gazette 7 February 1992 p.676.]

1. Definitions

In this Order —

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

“**process**” includes a citation.

2. Service of foreign legal process

Cf. E. O.69, R.2.

- (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 for use out of the jurisdiction.

[Rule 2 amended in Gazette 14 December 1979 p.3869.]

3. Service under Convention

Cf. E. O.69, R.3.

- (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 the Commonwealth of 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

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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 for use out of the jurisdiction.

[Rule 3 amended in Gazette 14 December 1979 p.3869.]

4. Service to be through sheriff

Cf. Vic. O.11, R.7(2).

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

Cf. W.A. O.XI, R.7(7).

Upon the application of the Crown 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.

Order 11A

[Heading inserted in Gazette 7 February 1992 p. 676.]

Service of foreign judicial process originating in a country that is a party to the Hague Convention

[Heading inserted in Gazette 7 February 1992 p.676.]

1. Definitions

In this Order —

“**additional authority**” means a person being an officer of the Court designated by the Commonwealth of Australia, to be an authority in addition to the Central Authority, for the purposes of the Hague Convention;

“**applicant**”, in relation to a request for service, means the competent authority that forwards that request to a Central Authority or additional authority;

“**Central Authority**” means a person or body designated by the Commonwealth of Australia from time to time to be the Central Authority for the Commonwealth for the purposes of the Hague Convention;

“**civil proceedings**” means any judicial proceedings in respect of civil or commercial matters, other than criminal proceedings;

“**competent authority**”, in relation to a document to be served, means an authority or judicial officer competent, under the law of the Convention country in which the document originates, to forward a request for service;

“**Convention country**” means a party to the Hague Convention, other than Australia;

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

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“request for service”, in relation to a document originating in a Convention country means a request in writing, in accordance with Form 5A or Form 5B in the Second Schedule, made by a competent authority requesting that the document be served on a person in the State.

[Rule 1 inserted in Gazette 7 February 1992 pp.676-7.]

2. Application

- (1) Subject to subrule (2) and Rule 3, this Order applies to the service in the State of any document originating in a Convention country and connected with civil proceedings pending before a court or other tribunal of that Convention country where a request for service (together with accompanying documents) in accordance with Rule 3 is forwarded by a competent authority —
 - (a) to the Central Authority, which forwards it to an additional authority in the State; or
 - (b) to an additional authority in the State.
- (2) Where the request for service is forwarded to an additional authority in the State in accordance with paragraph (1)(b) and (in the opinion of the additional authority) —
 - (a) compliance with the request for service may infringe Australia’s sovereignty or security; or
 - (b) the document to which the request for service relates is not a judicial document,the additional authority shall transmit the request for service and accompanying documents to the Central Authority.
- (3) Where the Central Authority returns the request for service and the accompanying documents to the additional authority, this Order shall then apply to the service in the State of the document to which the request relates.

[Rule 2 inserted in Gazette 7 February 1992 p.677.]

3. Request for service and accompanying documents

- (1) This Order shall not apply to a request for service unless it is accompanied by the following documents:
- (a) a copy of the request for service;
 - (b) the document to be served;
 - (c) a copy of the document to be served;
 - (d) a summary (in accordance with Form 5D in the Second Schedule) of the document to be served; and
 - (e) where —
 - (i) a document referred to in paragraph (a), (b) or (d) is not in the English language; and
 - (ii) the request for service does not contain a request that the service be by delivery to the person to be served, if that person accepts such service voluntarily,an English translation of the document.
- (2) An English translation of a document referred to in paragraph (1)(e) shall, unless the additional authority otherwise directs, bear a certificate in English by the translator stating that the translation is an accurate translation of the document.

[Rule 3 inserted in Gazette 7 February 1992 pp.677-8.]

4. Service

- (1) If a request for service is received by an additional authority in the State, together with the accompanying documents referred to in Rule 3, the additional authority must request the sheriff to serve the document to be served, together with such of those documents referred to in Rule 3(1)(a), (d) and (e) as accompanied the request for service (including a warning statement, if any, attached to the summary of the document to be served), in accordance with the request.

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- (2) Subject to subrule (3) the sheriff, in giving effect to the request of the additional authority, may cause the service requested to be effected by one of the following methods of service —
- (a) a method of service prescribed by the law in force in the State —
 - (i) for the service of a document of a kind corresponding to the document to be served; or
 - (ii) where there is no such corresponding document — for the service of originating process in proceedings in the Court; or
 - (b) by some other method requested by the applicant in the request for service, unless that method is incompatible with the law in force in the State; or
 - (c) where the applicant has not requested a particular method of service — by delivery of the document to be served to the person requested to be served, where that person accepts the document voluntarily.
- (3) Rule 4 of Order 72 shall apply to the service of documents under this Order, except that the Court may make an order for substituted service of the document on the basis of an affidavit or affidavits, lodged by the sheriff with the Court made by the person or persons who attempted to serve the document specifying —
- (a) details of the attempts made to serve the document; and
 - (b) the reasons which have prevented service,
- without an application being made to the Court in that behalf.
- [Rule 4 inserted in Gazette 7 February 1992 p.678.]*

5. Affidavit of service

Where service of the document to be served has been effected or attempts to serve it have failed, the sheriff must lodge with the

additional authority an affidavit made by the person who served, or attempted to serve, the document specifying —

- (a) where the document has been served —
 - (i) the time, day of the week and date on which the document was served;
 - (ii) the place where the document was served;
 - (iii) the method of service;
 - (iv) the person on whom the document was served; and
 - (v) the way in which that person was identified; and
- (b) where the document has not been served —
 - (i) details of the attempts made to serve the document; and
 - (ii) the reasons which have prevented service.

[Rule 5 inserted in Gazette 7 February 1992 p.679.]

6. Certificate of service

When an affidavit of service has been filed in accordance with Rule 5, the additional authority must —

- (a) complete a certificate of service, sealed with the seal of the Court, in accordance with Form 5E in the Second Schedule on the reverse side of, or attached to, the request for service; and
- (b) send the certificate of service directly to the applicant.

[Rule 6 inserted in Gazette 7 February 1992 p.679.]

7. Application of Rules generally

To the extent that these Rules (other than the Rules under this Order) are inconsistent with the Rules under this Order, the

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first-mentioned Rules do not apply to the service of a document to which this Order applies.

[Rule 7 inserted in Gazette 7 February 1992 p.679.]

Order 11B

[Heading inserted in Gazette 7 February 1992 p.679.]

Service of judicial process in a country that is a party to the Hague Convention

[Heading inserted in Gazette 7 February 1992 p.679.]

1. Definitions

(1) In this Order —

“applicant”, in relation to a request for service, means the Registrar who forwards that request to a foreign Central Authority or foreign additional authority;

“designated authority”, in relation to a Convention country, means a person or body designated by the Convention country, for the purposes of Article 6 of the Hague Convention, to be an authority competent to complete a certificate of service;

“foreign additional authority”, in relation to a Convention country, means a person or body designated by the Convention country, for the purposes of Article 18 of the Hague Convention, to be an authority in addition to a foreign Central Authority of that Convention country;

“foreign Central Authority”, in relation to a Convention country, means a person or body designated by the Convention country from time to time to be a Central Authority for the purposes of Article 2 of the Hague Convention.

(2) In this Order, **“Convention country”**, **“civil proceedings”** and **“Hague Convention”** have the same meaning as in Order 11A.

[Rule 1 inserted in Gazette 7 February 1992 pp.679-80.]

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2. Application

- (1) Subject to subrule (2), this Order applies to the service in a Convention country of a judicial document connected with civil proceedings pending before the Court or before another court of the State.
- (2) This Order does not apply where service of a document is effected by an Australian diplomatic or consular authority on a person in a Convention country.

[Rule 2 inserted in Gazette 7 February 1992 p.680.]

3. Records

- (1) The Registrar shall keep at the Registry a Register containing —
 - (a) a current list of all Convention countries;
 - (b) details of any objections or declarations made by any Convention country;
 - (c) the names and addresses of —
 - (i) the foreign Central Authority, or Central Authorities; and
 - (ii) any additional authorities, of each Convention country; and
 - (d) a copy of the Hague Convention.
- (2) A document that purports to be an extract from the Register referred to in subrule (1) shall be evidence of the matters stated in it.

[Rule 3 inserted in Gazette 7 February 1992 p.680.]

4. Documents required to be filed

- (1) A person (in this Order called the “**requesting party**”) who requires a judicial document connected with civil proceedings in

Australia to be served in a Convention country must file with the Registrar the following documents —

- (a) an application, in accordance with subrule (2), requesting service of the document in a specified Convention country;
 - (b) a request for service, in accordance with subrule (3), for signature by the Registrar;
 - (c) the document to be served;
 - (d) a summary (in accordance with Form 5D in the Second Schedule) of the document to be served;
 - (e) a warning statement (in accordance with Form 5F in the Second Schedule attached to, or incorporated in, the summary referred to in paragraph (d)) indicating the importance of the document to be served, its legal nature, that it may affect the rights and obligations of the person on whom it is served and the possibility of legal aid or advice being available;
 - (f) 2 copies of the documents referred to in paragraphs (b), (c), (d) and (e); and
 - (g) where a foreign Central Authority of the country to which the request is addressed requires the document to be served, to be written in, or translated into, an official language of that country, a translation, into an official language of that country, of the documents referred to in paragraphs (b), (c), (d) and (e).
- (2) The application requesting service of the document shall contain a written undertaking, signed by —
- (a) where there is a solicitor on the record for the requesting party — that solicitor; and

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- (b) in any other case — the requesting party;
- to —
- (c) be personally liable for all costs that are incurred in relation to the service of the document requested to be served, by —
 - (i) the employment of a judicial officer or other person competent, under the law of the Convention country in which the document is to be served; or
 - (ii) the use of a particular method of service;
 - and
 - (d) pay the amount of those costs to the Registrar within 14 days of receiving notification of the amount of those costs from the Registrar.
- (3) The request for service referred to in paragraph (1)(b) must —
- (a) be in accordance with Form 5C in the Second Schedule; and
 - (b) be completed (except for signature) by the requesting party; and
 - (c) state whether the requesting party wants service to be attempted where the period for entering an appearance has expired; and
 - (d) indicate where additional information may be obtained regarding the address of the person to be served, if the person cannot be traced from the address supplied; and
 - (e) be addressed to —
 - (i) a foreign Central Authority; or
 - (ii) a foreign additional authority, of the Convention country in which the person is to be served,

and may state whether the requesting party requires a certificate of service that is completed by a person or body other than a foreign Central Authority or a judicial authority of the Convention country to be countersigned by a foreign Central Authority or a judicial authority of that country.

- (4) A translation referred to in paragraph (1)(g) shall bear a certificate (in the same language as the language used in the translation) 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.

[Rule 4 inserted in Gazette 7 February 1992 pp.680-2.]

5. Procedure on filing application requesting service etc.

- (1) Where the documents referred to in Rule 4 are filed with the Registrar, the Registrar shall, if he or she is satisfied that the documents comply with the requirements of this Order —
- (a) sign the request for service; and
 - (b) forward —
 - (i) the request for service, duly signed;
 - (ii) the document to be served;
 - (iii) the documents referred to in Rule 4(1)(d) and (e) and where appropriate the documents referred to in Rule 4(1)(g); and
 - (iv) a copy of the documents referred to in subparagraphs (i), (ii) and (iii);
- to —
- (v) where the requesting party has asked for the request to be addressed to a foreign additional authority nominated by the requesting party — that additional authority; or

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(vi) in any other case — a foreign Central Authority in the Convention country in which service of the document is requested.

- (2) Where the Registrar is not satisfied that the filed documents comply with the requirements of this Order he or she must inform the requesting party of the respects in which the documents fail to comply with those requirements.

[Rule 5 inserted in Gazette 7 February 1992 p.682.]

6. Procedure on receipt of certificate in respect of service

- (1) When a certificate in respect of service, being a certificate in accordance with Form 5E in the Second Schedule that has been completed by a foreign Central Authority or a designated authority in the Convention country in which service was requested, is received by a Registrar, the Registrar shall —
- (a) file the original certificate of service in the record of the proceedings in respect of which the request was made; and
 - (b) send a copy of the certificate to the solicitor for the requesting party, or where there is no solicitor on the record for the requesting party, to the requesting party.
- (2) When the Registrar receives from the Convention country in which service of the document was requested a statement of costs in respect of the service requested being costs of a kind referred to in Rule 4(2) the Registrar shall send to the solicitor or requesting party, as the case may be, who gave the undertaking referred to in Rule 4(2) a notification of the amount of those costs incurred.

[Rule 6 inserted in Gazette 7 February 1992 pp.682-3.]

7. Payment of costs

- (1) The solicitor or requesting party, as the case may be, must, upon receipt of notification under Rule 6(2), pay the amount of the

costs to the Registrar within 14 days of receipt of the notification.

- (2) If the solicitor or requesting party fails to pay the costs requested within 14 days of the receipt of the notification —
- (a) the requesting party may not take any further action in the proceedings until those costs are paid to the Registrar under subrule (1); and
 - (b) the Registrar may take such steps as he or she considers appropriate to enforce the undertaking for payment of those costs.

[Rule 7 inserted in Gazette 7 February 1992 p.683.]

8. Evidence of service

Where a Registrar receives a certificate of service in accordance with Rule 6 certifying that service of the document to be served was effected on a specified date, the certificate shall be sufficient proof that —

- (a) service of the document was effected, in the manner specified in the certificate, on that date; and
- (b) if the method of service of the document was a particular method requested by the requesting party, that method is compatible with the law in force in the Convention country in which service was effected.

[Rule 8 inserted in Gazette 7 February 1992 p.683.]

9. Application of Rules generally

To the extent that these Rules (other than the Rules under this Order) are inconsistent with the Rules under this Order, the first-mentioned Rules do not apply to the service of a document to which, under Rule 2, this Order applies.

[Rule 9 inserted in Gazette 7 February 1992 p.683.]

Order 11C

[Heading inserted in Gazette 7 February 1992 p.683.]

Judgments in default of appearance where originating process is transmitted for service under the Hague Convention

[Heading inserted in Gazette 7 February 1992 p.683.]

1. Definitions

(1) In this Order —

“defendant”, in relation to a request for service abroad of an originating process, means the person on whom that originating process was requested to be served;

“originating process” means a document by which proceedings are commenced;

“proceedings” includes a claim against a third party;

“service abroad of an originating process” means the service under Order 11B in a Convention country, of an originating process in civil proceedings pending before the Court.

(2) In this Order —

(a) **“Convention country”**, **“civil proceedings”** and **“Hague Convention”** have the same meaning as in Order 11A; and

(b) **“designated authority”**, **“foreign additional authority”** and **“foreign Central Authority”** have the same meaning as in Order 11B.

[Rule 1 inserted in Gazette 7 February 1992 pp.683-4.]

2. Application

This Order applies to the entry of judgments in default of appearance where an originating process has been transmitted

under Rule 5(1)(b) of Order 11B to a foreign Central Authority or a foreign additional authority.

[Rule 2 inserted in Gazette 7 February 1992 p.684.]

3. Power to enter judgment in default of appearance where a certificate of service has been filed

(1) Judgment in default of appearance may not be entered unless —

(a) the originating process was served —

(i) by a method of service prescribed by the internal law of the Convention country in which service was effected for the service of documents in domestic actions upon persons who are within its territory;

(ii) by some other method requested in the request for service, where such a method is compatible with the law in force in the Convention country in which service was effected and under which the document was actually delivered to the defendant or his residence; or

(iii) by delivery to the defendant who accepted it voluntarily;

and

(b) the originating process was served in sufficient time to enable the defendant to defend the proceedings.

(2) In subrule (1)(b), “**sufficient time**” means 42 days or such lesser time as the Court considers, in the circumstances, to be a sufficient time to enable the defendant to defend the proceedings.

[Rule 3 inserted in Gazette 7 February 1992 p.684.]

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4. Filing of certificate of service deemed to be compliance with certain other Rules

The filing of a certificate of service under Rule 6(1)(a) of Order 11B is deemed to be sufficient compliance with any Rule requiring details of service of an originating process to be indorsed on the originating process.

[Rule 4 inserted in Gazette 7 February 1992 p.684; amended in Gazette 26 August 1994 p.4414.]

5. Power to enter judgment in default of appearance where a certificate of service has not been filed

Where, in relation to a request for service abroad of an originating process, a certificate of service has not been received by the Registrar, the Court may enter judgment in default of appearance by the defendant if the Court is satisfied that —

- (a) the originating process was transmitted to a foreign Central Authority or foreign additional authority under Rule 5(1)(b) of Order 11B;
- (b) a period that the Court considers adequate in the circumstances of the particular case (being a period of not less than 6 months) has elapsed since the date on which originating process was so transmitted; and
- (c) every reasonable effort has been made to obtain such a certificate from the foreign Central Authority, or foreign additional authority to which the originating process was transmitted, or other competent authority of the Convention country in which service was requested to be effected.

[Rule 5 inserted in Gazette 7 February 1992 pp.684-5.]

6. Interlocutory Orders

Rule 5 does not limit the Court's powers to make interlocutory, provisional or protective orders.

[Rule 6 inserted in Gazette 7 February 1992 p.685.]

7. Setting aside a judgment in default of appearance

- (1) Where a judgment has been entered under Rule 5 against a defendant who has not appeared, the Court may, on the application of the defendant, set aside the judgment if it is satisfied that the defendant —
 - (a) without any fault on the defendant's part, did not have knowledge of the originating process in sufficient time to defend the proceedings; and
 - (b) has a prima facie defence to the action on the merits.
- (2) An application to have a judgment set aside under this Rule may be brought only within such period of time after the defendant acquires knowledge of the judgment as the Court considers reasonable in the circumstances.
- (3) Nothing in this Rule affects any other power of the Court to set aside or vary a judgment.

[Rule 7 inserted in Gazette 7 February 1992 p.685.]

8. Application of Rules generally

- (1) Subject to subrule (2), to the extent that these Rules (other than the Rules under this Order) are inconsistent with the Rules under this Order, the first-mentioned Rules do not apply to the entry of judgments in default of appearance to which, under Rule 2, this Order applies.
- (2) The power of the Court to enter judgment in default of appearance under this Order against a person who is under a disability is subject to the provisions of these Rules that restrict the Court's power to enter judgment in default of appearance against such a person.

[Rule 8 inserted in Gazette 7 February 1992 p.685.]

Order 12

Appearance

1. Mode of entering appearance

Cf. E. O.12, R.1.

- (1) Subject to paragraph (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 solicitor 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 solicitor.
- (3) A defendant shall enter his appearance in the Central Office.
- (4) An appearance is entered by properly completing a memorandum of appearance as defined by Rule 2, and a copy thereof and delivering both documents to the Registrar.
- (5) If 2 or more defendants to an action enter an appearance by the same solicitor and at the same time, only one set of the requisite documents need be completed and delivered for those defendants.

[Rule 1 amended in Gazette 7 October 1977 p.3602.]

2. Memorandum of appearance

Cf. E. O.12, R.3.

- (1) A memorandum of appearance is a request to the Registrar to enter an appearance for the defendant or defendants specified in the memorandum.
- (2) A memorandum of appearance must be in Form No. 6, and both the memorandum of appearance and the copy thereof required for entering an appearance must be signed by the solicitor by

whom the defendant appears or, if the defendant appears in person, by the defendant.

- (3) A memorandum of appearance must specify —
- (a) in the case of a defendant appearing in person the address of his place of residence and a place to be his address for service, which shall not be more than 66 kilometres from the Supreme Court at Perth;
 - (b) in the case of a defendant appearing by a solicitor, the business address of the solicitor, and if that address is more than 66 kilometres from the said Court, a place not more than 66 kilometres from the said Court which shall be the address for service of the defendant.
- (4) Where the defendant enters an appearance by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the memorandum of appearance must state that the first-named solicitor so acts and must also state the name and address of that other solicitor.
- (5) Where the memorandum of appearance of a defendant appearing in person does not contain an address for service as required by paragraph (3) it shall not be received, and if the Court, on the application of the plaintiff, is satisfied that any such address is illusory or fictitious, the appearance may be set aside.

*[Rule 2 amended in Gazette 7 December 1973 p.4489;
31 March 1983 p.1090.]*

3. Procedure on receipt of requisite documents

Cf. E. O.12, R.4.

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, enter the appearance in the Cause Book, 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 in Gazette 15 June 1973 p.2247.]

4. Notice of appearance

Cf. Vic. O.12, R.3.

On the day on which he enters an appearance to a writ, a defendant shall give notice of his appearance to the plaintiff's solicitor, or if the plaintiff sues in person, to the plaintiff himself, by serving in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, the stamped copy memorandum.

5. Late appearance

Cf. E. O.12, R.6.

- (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 paragraph (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.

6. Conditional appearance

Cf. Tas. O.13, R.24. S.A. O.12, R.9.

- (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 service before appearance

Cf. E. O.12, R.8.

A defendant to an action may at any time before entering an appearance therein, serve notice of motion to set aside the writ or service of the writ, or notice of the writ on him or discharging any order giving leave to serve the writ or notice on him out of the jurisdiction.

8. Person not named may defend for land

Cf. W.A. O.XII, R.10.

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 to be named as defendant

Cf. Ib. O.XII, R.11.

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

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defend he shall in all subsequent proceedings be named as a party defendant to the action.

10. Limited defence and notice thereof

Cf. Vic. O.12, R.15.

- (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 paragraph (1) shall be in accordance with Form No. 7.

Order 13

Default of appearance to writ

1. Affidavit of service

Cf. E. O.13, R.7.

- (1) Judgment shall not be entered against a defendant under this Order unless —
 - (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant and due 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 he accepts service of the writ on the defendant's behalf.
- (2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

2. Claim for liquidated demand

Cf. E. O.13, R.1.

- (1) Where the writ is indorsed with a claim for a liquidated demand only, then, if a defendant fails to enter an appearance to the writ, the plaintiff may, after the time limited for appearance has expired, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand, and for costs.
- (2) For the purpose of this Rule, a claim is not a claim other than for a liquidated demand by reason only that 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 in Gazette 30 November 1984 p.3952.]

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3. Where liquidated demand judgment against several defendants

Cf. Vic. O.13, R.3.

Where the writ is indorsed with a claim for a liquidated demand only, and there are several defendants of whom one or more appear to the writ and another or others of them fail to appear, the plaintiff may enter final judgment as in Rule 2 against such as have not appeared and may issue execution upon such judgment without prejudice (except where the defendants are sued in the alternative) to his right to proceed with his action against such as have appeared.

4. Claim in detinue

Cf. E. O.13, R.3.

- (1) Where the writ is indorsed with a claim relating to the detention of goods only, then, if a defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, at his option enter either —
 - (a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs; or
 - (b) interlocutory judgment against him for the value of the goods to be assessed and costs,

and proceed with the action against the other defendants, if any.

- (2) On an interlocutory judgment under this Rule against a defendant or all the defendants, if more than one, the value of the goods shall be assessed by a Master, unless the Court otherwise directs.

[Rule 4 amended in Gazette 30 November 1984 p.3951.]

5. Claim for possession of land

Cf. E. O.13, R.4. Cf. Vic. O.13, R.8.

- (1) Where the writ is indorsed with a claim against a defendant for possession of land only, then if that defendant fails to enter an appearance within the time limited, the plaintiff may, on producing a certificate from his solicitor, or, if he sues in person an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 62A Rule 1, enter judgment for possession of the land against that defendant and the costs, and proceed in the action against the other defendants if any.
- (2) Where there is more than one defendant, judgment entered under this Rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

[Rule 5 amended in Gazette 10 January 1975 p.50⁶.]

6. Mixed claims

Cf. E. O.13, R.5

Where the writ is indorsed with 2 or more of the claims mentioned in Rules 2, 3, 4, 5, and 7, and no other claim, then if a defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those Rules if that were the only claim made by him against the defendant, and proceed with the action against the other defendants, if any.

[Rule 6 amended in Gazette 15 June 1973 p.2247.]

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7. Claims for damages

Cf. W.A. O.XIII, R.2(1). Cf. E. O.13, R.2.

- (1) Where the writ is indorsed with a claim against a defendant for unliquidated damages only, and that defendant fails to enter an appearance within the time limited for appearing, the plaintiff shall be entitled to enter interlocutory judgment against that defendant and obtain an order for directions for the assessment of damages, and proceed with the action against the other defendants, if any.
- (2) The plaintiff shall at least 7 days before the day fixed for the assessment of the damages serve notice of the appointment for hearing on the party against whom the judgment has been given.
- (3) Notwithstanding anything in Order 72 Rule 8 a notice under this Rule must be served on the party against whom the judgment has been given, unless the writ was served on that party by substituted service, and his address is unknown to the plaintiff.

8. Other cases

Cf. E. O.13, R.6.

- (1) Where the plaintiff's claim against any defendant is of a description not mentioned in Rules 2, 3, 4, 5, and 7, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, and upon filing an affidavit proving due service of the writ on that defendant, and where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, apply to the Court on motion for judgment.
- (1A) On an application under paragraph (1) the applicant or his solicitor 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.

- (2) Where the plaintiff's claim is aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof, or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then if the defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs. The application for such leave shall be by summons which must unless the Court otherwise orders and notwithstanding anything in Order 72 Rule 8, be served on the defendant against whom it is sought to enter judgment.

[Rule 8 amended in Gazette 15 June 1973 p.2247; 24 June 1977 p.1914.]

9. Reference to Court in case of doubt

Cf. W.A. O.XIII, R.2(2).

In any case in which the plaintiff claims to be entitled under the Rules of this Order to enter final or interlocutory judgment in default of the defendant's appearance, a Master may, if any doubt or difficulty arises, direct that the application for leave to enter judgment be brought before the Court on motion or by summons.

[Rule 9 amended in Gazette 30 November 1984 p.3952.]

10. Setting aside judgment

E. O.13, R.9.

The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

Order 14

Summary judgment

1. Plaintiff's application for summary judgment

Cf. E. O.14, R.1.

- (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.

Cf. Supreme Court Act 1935, s.42.

- (2) This Order applies to every action begun by writ other than a probate or admiralty action.

*[Rule 1 amended in Gazette 5 June 1992 p.2279;
28 October 1996 p.5675.]*

2. Application to be by summons

Cf. E. O.14, R.2.

- (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 in Gazette 3 October 1975 p.3769.]

3. Judgment may be given for plaintiff

Cf. E. O.14, R.3.

- (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. Leave to defend

Cf. E. O.14, R.4.

- (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. *Repealed in Gazette 28 October 1996 p.5675.*]

6. Summary judgment on counterclaim

Cf. E. O.14, R.5.

- (1) Where a defendant in an action begun by writ has served a counterclaim on the plaintiff, then subject to paragraph (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;
 - (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).

7. Directions

Cf. E. O.14, R.6. Cf. Vic. O.14, R.8.

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 all such directions as to the further conduct of the action as might be given on a summons for directions under Order 29, 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.

8. Costs

Cf. E. O.14, R.7.

- (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 paragraph (1) to dismiss an application under Rule 1, and that paragraph shall apply accordingly with the necessary modifications.

[Rule 8 amended in Gazette 15 June 1973 p.2248.]

9. Right to proceed with residue of action or counterclaim

Ib. R.8.

- (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

Cf. E. O.14, R.9. Cf. W.A. O.XIV, R.1(5).

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 forfeiture

Cf. W.A. O.XIV, R.9.

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. Setting aside judgment

Cf. E. O.14, R.11. Cf. W.A. O.XIII, R.5.

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 (Rules 1-8) repealed in Gazette 28 October 1996 p.5675.]

Order 16

Summary judgment on application of defendant

1. Defendant may apply for summary judgment

Cf. Vic. O.14(A), R.I.

- (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 paragraph (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 in Gazette 14 December 1979 p.3869;
5 June 1992 pp.2279-80.]*

2. Plaintiff may show cause

Ib. R.2.

- (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.

Attendance for examination

- (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 in Gazette 14 December 1979 p.3869;
5 June 1992 p.2280.]*

3. Directions

Ib. R.3.

If the Court directs that the action shall proceed to trial, it may give all such directions as to the further conduct of the action as might be given on a summons for directions under Order 29 and may order that the action be forthwith set down for trial.

[Rule 3 amended in Gazette 14 December 1979 p.3869.]

4. Judgment 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 in Gazette 5 June 1992 p.2280.]

Order 17

Interpleader

1. Relief by way of interpleader

W.A. O.XVII, R.1.

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; or

- (b) where the applicant is the sheriff or other officer charged with the execution of process under the authority of the Court, and claim is made to any land, goods, chattels, or money taken or intended to be taken in execution, or to the proceeds or value of any such land, goods, or chattels by any person other than the person against whom the process is issued.

2. Mode of application

Cf. E. O.17, R.3.

- (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) Subject to paragraph (4) 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;
 - (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.
- (4) Where the applicant is the sheriff he shall not provide such evidence as is referred to in paragraph (3) unless the Court directs him to do so.

3. Time for application by defendant

W.A. O.XVII, R.3.

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

Ib. R.5.

If the application is made by a defendant the Court may stay all further proceedings.

5. Order on summons

Ib. R.6. Cf. E. O.17, R.5.

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

Cf. W.A. O.XVII, R.7. Cf. E. O.17, R.5.

The Court may, with the consent of both claimants or on the request of any claimant, or if the applicant is the sheriff, dispose of the merits of the claims and decide the same in a summary manner.

7. Where question of law only

W.A. O.XVII, R.8. Cf. E. O.17, R.5.

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.

W.A. O.XVII, R.9.

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

Ib. R.10.

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

Ib. R.11.

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

Cf. Ib. R.12.

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. Claim etc. to goods taken in execution

Cf. Ib. R.13.

- (1) Where a claim is made to any property taken in execution it must be in writing and the claimant must indorse thereon an address for service which must not be more than 66 kilometres from the Court at Perth, where notices and other documents in the proceedings not required to be served on the claimant personally may be served on him.
- (2) Upon the receipt of the claim the sheriff or his officer must forthwith give notice thereof to the execution creditor (Form No. 8), and the execution creditor must within 14 days after receiving the notice give notice to the sheriff or his officer whether he admits or disputes the claim (Form No. 9). If the execution creditor admits the title of the claimant and gives notice as directed by this Rule he shall only be liable to the

sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

*[Rule 12 amended in Gazette 15 June 1973 p.2247;
7 December 1973 p.4489; 31 March 1983 p.1090;
26 January 1993 p.824.]*

13. Withdrawal by sheriff

Ib. R.14.

When the execution creditor has given notice to the sheriff or his officer that he admits the claim of the claimant, the sheriff may thereupon withdraw from possession of the property claimed, and may obtain an order protecting him from any action in respect of the seizure and possession.

14. Application by the sheriff

Ib. R.15.

- (1) Where the execution creditor does not within the time prescribed by Rule 12(2) admit the title of the claimant to the property, or where the execution creditor disputes the claimant's title, and the claimant does not withdraw his claim by notice in writing to the sheriff or his officer, the sheriff may issue an interpleader summons; and service of the summons upon the claimant may be effected by leaving it at or posting it to his address for service, or, where the claimant has no address for service, by posting the summons to him at his last known address.
- (2) Should the claimant withdraw his claim by notice in writing to the sheriff, or his officer, or the execution creditor serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the Judge may make all necessary orders as to costs and expenses.

[Rule 14 amended in Gazette 15 June 1973 p.2248.]

15. Other powers of the Court

E. O.17, R.8.

Subject to the foregoing Rules of this Order, 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.

Order 18

Causes of action, counterclaims and parties

1. Joinder of causes of action

Cf. E. O.15, R.1.

- (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

Ib. R.2.

- (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

ib. R.3.

- (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 paragraph 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 paragraph (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

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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 paragraph (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 except Rule 3, Order 12 and Order 13 shall, subject to the last foregoing paragraph, 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 —
- (a) stating the effect of Order 12, Rule 1, as applied by paragraph (4); and
 - (b) specifying the appropriate office for the entry of appearance by that person to the counterclaim.

4. Joinder of parties

Ib. R.4.

- (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 paragraph, be made a defendant.

This paragraph 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.

5. Court may order separate trials, etc.

Ib. R.5.

- (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

Cf. E. O.15, R.6.

- (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 paragraph (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.

7. Change of parties by reason of death, etc.

Ib. R.7.

- (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 paragraph 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.

8. Provisions consequential on making of order under Rule 6 or 7

Cf. E. O.15, R.8.

- (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 the foregoing provision 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.

9. Failure to proceed after death of party

ib. R.9.

- (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.

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10. Actions for possession of land

Ib. R.10.

- (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

Cf. E. O.15, R.11.

- (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.

Cf. W.A. O.XVI, R.19.

- (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. Representative proceedings

Cf. E. O.15, R.12. Cf. W.A. O.XVI, RR.9, 12.

- (1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in Rule 13, 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 paragraph, 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 paragraph (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, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

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- (6) The Court hearing an application for the grant of leave under paragraph (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.

13. Representation of interested persons who cannot be ascertained, etc.

Cf. E. O.15, R.13. Cf. W.A. O.XVI, R.9.

- (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 paragraph (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 paragraph (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 paragraph (1) applies, the Court exercises the power conferred by that paragraph, 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 paragraph (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.

14. Representation of beneficiaries by trustees, etc.

E. O.15, R.14.

- (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

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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) Paragraph (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.

15. Representation of deceased person interested in proceedings

ib. R.15.

- (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

Cf. W.A. O.XXV, R.5. Cf. E. O.15, R.16.

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

Cf. E. O.15, R.17.

The Court may give the conduct of any action, inquiry or other proceeding to such person as it thinks fit.

Order 19

Third party and similar proceedings

1. Third party notice

Cf. E. O.16, R.1. Cf. W.A. O.XVI, R.32.

- (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 paragraph (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.

2. Application for leave to issue third party notice

Cf. E. O.16, R.2.

- (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;
 - (b) the stage which proceedings in the action have reached;
 - (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

Cf. E. O.16, R.3. Cf. W.A. O.XVI, R.32(2).

- (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 the foregoing provisions of this Rule, the following provisions of these Rules, namely, Order 5 Rules 7, 8 and 11, Order 9 except Rule 1(4), Order 10 except Rule 3 and Order 12,

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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 in Gazette 7 October 1977 p.3602.]

4. Third party directions

Cf. E. O.16, R.4. Cf. W.A. O.XVI, RR.36, 37.

- (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 paragraph (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 in Gazette 26 August 1994 p.4410.]

5. Default of third party, etc.

E. O.16, R.5. Cf. W.A. O.XVI, R.40.

- (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 paragraph (1)(b) or paragraph (2) on such terms (if any) as it thinks just.

6. Setting aside third party proceedings

Cf. E. O.16, R.6. Cf. W.A. O.XVI, R.34.

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

Cf. E. O.16, R.7. Cf. W.A. O.XVI, R.38.

- (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 a defendant and some other party

E. O.16, R.8.

- (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 paragraph (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 paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (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

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(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”.

9. Claims by third and subsequent parties

E. O.16, R.9. Cf. W.A. O.XVI, R.33.

- (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 paragraph (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 paragraph (1) is that paragraph (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.

10. Offer of contribution

E. O.16, R.10.

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

E. O.16, R.11. Cf. W.A. O.XVI, R.43.

Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order 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.

12. Costs

Vic. O.16(A), R.13.

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. Service of Statement of Claim

Cf. E. O.18, R.1.

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 or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 14 days after that defendant enters an appearance.

2. Statement of Claim

Cf. E. O.18, R.15.

- (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 paragraph (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.

3. Pleadings, etc., to be filed before service

Cf. W.A. O.XIX, RR.2A, 10.

- (1) Subject to paragraph (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 24 hours after filing the original.
- (2) This Rule does not apply where the Statement of Claim is indorsed on the writ.

4. Service of defence

Cf. E. O.18, R.2.

- (1) Subject to paragraph (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, paragraph (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.

5. Service of reply and defence to counterclaim

Ib. R.3.

- (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.

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- (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

Ib. R.4.

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

Cf. E. O.18, R.6.

- (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;
 - (b) the title of the action;
 - (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 and also (if the solicitor is the agent of another) the name or firm and business address of his principal.
- (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 paragraph (5) if the pleading is signed by a solicitor who —
 - (a) is employed by the party's solicitor;
 - (b) has settled the pleading;
 - (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 in Gazette 15 June 1973 p.2248.]

8. Facts, not evidence, to be pleaded

Ib. R.7.

- (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 paragraph (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.

9. Matters which must be specifically pleaded

ib. R.8.

- (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 paragraph (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;
 - (ii) specify the rate claimed; and
 - (iii) state the date or dates from which interest is claimed.

*[Rule 9 amended in Gazette 3 October 1975 p.3769;
31 March 1983 p.1090.]*

10. Matter may be pleaded whenever arising

Cf. E. O.18, R.9.

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. Departure

Ib. R.10.

- (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) Paragraph (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.

12. Points of law may be pleaded

Ib. R.11.

A party may by his pleading raise any point of law.

13. Particulars of pleading

Cf. E. O.18, R.12.

- (1) Subject to paragraph (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 paragraph (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.

W.A. O.XIX, R.8.

- (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 in Gazette 26 August 1994 p.4410.]

13A. Particulars in defamation actions

Cf. E. O.82, R.3.

- (1) Where in an action for libel or slander 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 libel or slander 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 libel or slander 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 libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made were the defendant.

[Rule 13A inserted in Gazette 23 September 1983 p.3797.]

14. Admissions and denials

Cf. E. O.18, R.13.

- (1) Subject to paragraph (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 paragraph (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.

15. Denial by joinder of issue

ib. R.14.

- (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.
- (2) Subject to paragraph (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.

16. Defence of tender

ib. R.16.

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

Ib. R.17.

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

Ib. R.18.

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 and indorsements

Ib. R.19.

- (1) The Court may at any stage of the proceedings, subject to paragraph (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 paragraph (1)(a).
 - (3) Subject to paragraph (4) an application for an order under paragraph (1) must —
 - (a) be made within 21 days of the service of any pleading, or amended pleading, or writ to which the application refers;
 - (b) where the application is to strike out certain pleadings, specify —
 - (i) the subparagraph of paragraph (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) repealed]

- (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 in Gazette 26 August 1994 pp.4410-11; 24 January 1995 p.270; 9 August 1996 p.3949.]

20. Close of pleadings

Cf. E. O.18, R.20.

- (1) Subject to paragraph (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.

21. Trial without pleadings

E. O.18, R.21.

- (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) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may,

give such directions as to the further conduct of the action as may be appropriate, and Order 29 Rules 2 to 5 shall, with the omission of so much of Rule 5 as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application under this Rule were a summons for directions.

- (4) This Rule applies to every action begun by writ other than one which includes —
- (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
 - (b) a claim by the plaintiff based on an allegation of fraud.

22. Preparation of issues

Cf. W.A. O.XXXII, R.1.

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. Preliminary Act — collision between vessels

Cf. H.Ct. O.20, R.30. Cf. E. O.75, R.18.

- (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 in the Central Office 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 in the Central Office.

- (3) The Preliminary Act shall contain a statement of the following particulars —
- (i) the names of the vessels which came into collision, the names of their masters, and their ports of registry;
 - (ii) the date and time of the collision;
 - (iii) the place of the collision;
 - (iv) the direction and force of the wind;
 - (v) the state of the weather;
 - (vi) the state, direction and force of the tidal or other current;
 - (vii) 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;
 - (viii) the lights (if any) carried by the vessel;
 - (ix)
 - (a) the distance and bearing of the other vessel if and when her echo was first observed by radar;
 - (b) the distance, bearing and approximate heading of the other vessel when first seen;
 - (x) what light or combination of lights (if any) of the other vessel was first seen;
 - (xi) what other lights or combination of lights (if any) of the other vessel were subsequently seen before the collision, and when;
 - (xii) 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;
 - (xiii) the parts of each vessel which first came into contact and the approximate angle between the 2 vessels at the moment of contact;

- (xiv) what sound signals (if any) were given, and when;
 - (xv) 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.

24. Failure to lodge Preliminary Act

- (1) Where in an action to which Rule 23 applies, the plaintiff fails to lodge a Preliminary Act within the time prescribed for that purpose by that Rule or by any order of the Court, any defendant who has lodged 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 lodge 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 lodge 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.

Order 21

Amendment

1. Amendment of writ without leave

Cf. E. O.20, R.1.

- (1) Subject to paragraph (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.
- (2) A writ amended under this Rule after service must, unless the Court otherwise directs on application, made *ex parte*, be served as amended on each defendant to the action.
- (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;
 - (c) without prejudice to Rule 3(1) an amendment of the statement of claim, if any, indorsed on the writ.

2. Amendment of appearance

Ib. R.2.

A defendant may not amend his memorandum of appearance without the leave of the Court.

3. Amendment of pleadings without leave

Ib R.3. Cf. W.A. O.XXVIII, RR.2, 3, 5.

- (1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.

- (2) Where an amended statement of claim is served on a defendant —
 - (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence; and
 - (b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.
- (3) Where an amended defence is served on the plaintiff by a defendant —
 - (a) the plaintiff, if he has already served a reply on that defendant, may amend his reply; and
 - (b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.
- (4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.
- (5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.
- (6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this Rule, he shall be taken to rely on it in answer to the amended pleading, and Order 20, Rule 15(2) shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

4. Application for disallowance of amendment made without leave

E. O.20, R.4. Cf. W.A. O.XXVIII, R.4.

- (1) Within 14 days after the service on a party of a pleading amended under Rule 3(1), that party may apply to the Court to disallow the amendment.
- (2) Where the Court hearing an application under this Rule is satisfied that if an application for leave to make the amendment in question had been made under Rule 5 at the date when the amendment was made under Rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.
- (3) Any order made on an application under this Rule may be made on such terms as to costs or otherwise as the Court thinks just.

5. Amendment of writ or pleading with leave

E. O.20, R.5. Cf. W.A. O.XXVIII, R.6.

- (1) Subject to —
 - (a) Order 18 Rules 6, 7 and 8;
 - (b) Order 20 Rule 19(2) to (5); and
 - (c) the following provisions of this Rule,

the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as the court may direct.

- (2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

- (3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the party intending to sue or, as the case may be, intended to be sued.
- (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.
- (5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

[Rule 5 amended in Gazette 24 January 1995 p.270.]

6. Amendment of other originating process

E. O.20, R.7.

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. Amendment of other documents

E. O.20, R.8.

- (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

E. O.20, R.9.

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 amend the document 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.

9. Mode of amendment

Cf. W.A. O.XXVIII, RR.8, 9. Cf. E. O.20, R.10. Cf. M.C. Rules (Clth.), RR.94, 95(2).

- (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 red, or in such other manner as 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 paragraph (1), and subject to any direction given under Rules 5 or 7, the amendments so authorised shall be effected by writing the necessary alterations on the writ, pleading or other document in red or in such other

manner as will distinguish the alterations from the original document or from any previous amendment, and in the case of a writ or originating summons, causing it to be re-sealed and filing a copy thereof.

- (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.
- (4) When any pleading has been amended such amended document must be filed and served on the opposite party not later than the day next following the day on which the pleading is amended, unless the opposite party has no address for service in which case, notwithstanding Order 72 Rule 8, the amended document must be served as soon as practicable after the amendment is made.

[Rule 9 amended in Gazette 24 January 1995 p.272.]

10. Amendment of judgments and orders

Cf. W.A. O.XXVIII, R.11.

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.

Order 22

Default of pleadings

1. Default in service of statement of claim

Cf. E. O.19, R.1.

If the plaintiff, being required by these Rules to serve a statement of claim on a defendant fails to serve it on him within the time allowed by or under these Rules for that purpose, the defendant may after the expiration of that time, apply to the Court 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. Default of defence: claim for liquidated demand

Cf. E. O.19, R.2.

- (1) Where the plaintiff's claim is against a defendant for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand, and for costs, and proceed with the action against the other defendants, if any.
- (2) Order 13 Rule 2(2) shall apply for the purpose of this Rule as it applies for the purpose of that Rule.

*[Rule 2 inserted in Gazette 30 November 1984 pp.3952-3;
amended in Gazette 20 June 1986 p.2040.]*

3. Claim for unliquidated damages

Cf. E. O.19, R.3.

- (1) Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve

a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter interlocutory judgment against that defendant and obtain an order for directions for the assessment of damages, and proceed with the action against the other defendants, if any.

- (2) Order 13 Rule 7(2) and (3) shall apply for the purposes of this Rule as they apply for the purposes of that Rule.

4. Claim in detinue

Ib. R.4.

Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter either —

- (a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs; or
- (b) interlocutory judgment for the value of the goods to be assessed and costs,

and proceed with the action against the other defendants, if any.

5. Claim for possession of land

Ib. R.5.

- (1) Where the plaintiff's claim against a defendant is for possession of land only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, on producing a certificate from his solicitor, or, if he sues in person an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 62A Rule 1 after the expiration of the period fixed by or under these Rules for service of the defence, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.

- (2) Where there is more than one defendant, judgment entered under this Rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

[Rule 5 amended in Gazette 10 January 1975 p.50⁶.]

6. Mixed claims

Ib. R.6.

Where the plaintiff makes against a defendant 2 or more of the claims mentioned in Rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those Rules if that were the only claim made, and proceed with the action against the other defendants, if any.

7. Other claims

Ib. R.7.

- (1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in Rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or failed to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.
- (1A) On an application under paragraph (1), the applicant or his solicitor must produce a certificate issued by the proper officer on the day of the hearing stating that no defence has been filed by the defendant against whom it is sought to enter judgment.

- (2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may —
- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or
 - (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.
- (3) An application under paragraph (1) must be by summons.
[Rule 7 amended in Gazette 15 June 1973 p.2248.]

8. Default of defence to counterclaim

Ib. R.8.

A defendant who counterclaims against a plaintiff shall be treated for the purposes of Rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those Rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

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9. Reference to Court

Cf. W.A. O.XIII, R.2(2).

Order 13, Rule 9 applies mutatis mutandis to a claim by the plaintiff to enter final or interlocutory judgment under the provisions of this Order.

10. Setting aside judgment

E. O.19, R.9.

The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

Order 23

Discontinuance

1. Withdrawal of appearance

E. O.21, R.1.

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 may be withdrawn

Cf. W.A. O.XXVI, R.1.

- (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 paragraph (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

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defendant to withdraw his defence or counterclaim, or any part thereof, without such leave.

3. Costs

Ib. R.3.

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

Ib. R.4.

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

E. O.21, R.6.

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. Repealed in Gazette 5 April 1991 p.1398.]

9. In certain cases no payment out without order

Cf. E. O.22, R.8.

- (1) Subject to paragraph (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 in Gazette 14 December 1979 p.3869;
30 November 1984 p.3951.]*

[10. Repealed in Gazette 5 April 1991 p.1398.]

r. 11

11. Amounts under \$7 500 may be paid 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, child, father, mother, brother or sister of the deceased would be entitled to take out administration.

[Rule 11 amended in Gazette 30 November 1984 p.3953.]

12. Regulations

Cf. App. M. (W.A.).

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 the Third Schedule.

Order 24A

[Heading inserted in Gazette 5 April 1991 p.1398.]

Offer of compromise

[Heading inserted in Gazette 5 April 1991 p.1398.]

1. Mode of making 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 shall —
 - (a) be in writing; and
 - (b) bear a statement to the effect that the offer is made under this Order.

[Rule 1 inserted in Gazette 5 April 1991 p.1398.]

2. Application

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 2 inserted in Gazette 5 April 1991 p.1399.]

3. Time for making or accepting offer

- (1) An offer may be made at any time before the time prescribed by paragraph (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.

r. 3

- (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 paragraph (3) or, if no time is specified, the expiration of 28 days after the offer is made; or
 - (b) the time prescribed by paragraph (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 paragraph (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 paragraphs (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 in Gazette 5 April 1991 p.1399; amended in Gazette 28 February 1992 p.995; 30 October 1992 p.5310.]

4. Time for payment

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 in Gazette 5 April 1991 p.1399.]

5. Withdrawal of acceptance

- (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 paragraph (2);
 - (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 in Gazette 5 April 1991 p.1399.]

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 in Gazette 5 April 1991 p.1399.]

r. 7

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 in Gazette 5 April 1991 pp.1399-1400.]

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 a defendant in the proceeding has made a cross-claim which is not the subject of the accepted offer, the Court may make such order or give such judgment under paragraph (1) and make such order that the proceeding on the cross-claim be continued as it thinks fit.

[Rule 8 inserted in Gazette 5 April 1991 p.1400; amended in Gazette 28 February 1992 p.995.]

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 in Gazette 5 April 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 paragraph (1), that term shall be of no effect for any purpose under this Order.
- (3) Paragraphs (4) to (6) apply to an offer which has not been accepted in the time prescribed by Rule 3(8).

r. 10

- (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, taxed on an indemnity basis in addition to his costs incurred before that date, taxed on a party and party basis.
- (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.
- (6) For the purpose of paragraph (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.
- (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 paragraphs (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 paragraph (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) Paragraphs (4) and (5) shall not apply unless the Court is satisfied by the party making the offer that the party was at all material times willing and able to carry out what the party offered.

[Rule 10 inserted in Gazette 5 April 1991 pp.1400-1; amended in Gazette 28 February 1992 p.996.]

Order 25

Security for costs

1. Security generally

W.A. O.LXV, R.10.

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

Ib. R.11.

Without limiting the generality of the preceding Rule 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.

3. Court has a discretion

Ib. R.12.

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. Definition

Ib. R.13.

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

Ib. R.14.

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

Ib. R.15.

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

Ib. R.16.

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 in Gazette 14 December 1979 p.3869.]

8. Saving

Cf. E. O.23, R.3.

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. Interpretation

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 in Gazette 5 June 1992 pp.2280-1.]

1. Discovery without order

Cf. W.A. RR.1, 3. O.XXX. Cf. E. O.24, R.2.

- (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 paragraph (1) shall not be given without the leave of the Court.
- (3) If the party making the requisition for discovery of documents so elects in the notice the discovery may take the form of a list

of documents which must be attested by the solicitor for the party giving discovery or by some person authorised by the Court to take affidavits.

- (4) If the party making the requisition does not agree to accept the list in the form provided by paragraph (3) then the list must be verified by affidavit.

[Rule 1 amended in Gazette 28 October 1996 p.5675.]

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 paragraph (1) or (2) shall be given in accordance with paragraphs (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 paragraph (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 in Gazette 28 October 1996 pp.5675-6.]

[2A. Repealed in Gazette 28 October 1996 p.5675.]

3. Determination of issue before discovery

Cf. W.A. O.XXX, R.5(8). Cf E. O.24, R.4.

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 in Gazette 28 October 1996 p.5676.]

4. Form of list and affidavit — by whom made

Cf. E. O.24, R.5

- (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.

r. 5

Cf. W.A. O.XXX, R.10.

- (4) Any list of documents or affidavit verifying such list may be made —
- (a) by the party;
 - (b) where the party is the Crown or an officer of the Crown sued or suing in his official capacity — by an officer of the Crown;
 - (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 in Gazette 30 November 1984 p.3953;
28 October 1996 p.5676.]*

5. Defendant entitled to copy of co-defendant's list

Cf. E. O.24, R.6

- (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 paragraph (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 in Gazette 28 October 1996 p.5676.]

6. Order for discovery of particular documents

E. O.24, R.7.

- (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 in Gazette 28 October 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.

r. 8

- (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 in Gazette 28 October 1996 pp.5677-8.]

8. Inspection of documents in list

Cf. E. O.24, RR.9, 10. W.A. O.XXX, RR.1,4.

- (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 paragraph (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 an office not more than 3 kilometres from the Court at Perth, 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 in Gazette 7 December 1973 p.4489;
28 October 1996 p.5678.]*

r. 8A

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 paragraph (1)(a); and
 - (b) if the party so requires, is not to be disturbed at all.

[Rule 8A inserted in Gazette 26 August 1994 pp.4411-12.]

9. Order for inspection of documents

Cf. E. O.24, R.11.

- (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 paragraph (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 paragraph (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.

10. Order for production to the Court

Cf. E. O.24, R.12.

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.

r. 11

11. Production only if necessary

Cf. E. O.24, R.13(1).

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 preparation of 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 in Gazette 5 June 1992 p.2281.]

12. Claim of privilege

Cf. W.A. O.XXX, RR.8, 9. Cf. E. O.24, R.13(2).

(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. Production of business books

W.A. O.XXX, R.5(5).

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 in Gazette 14 December 1979 p.3870.]

14. Where disclosure against public interest

Cf. E. O.24, R.15.

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.

Cf. E. O.24, R.16 W.A. O.XXX, R.11.

- (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.

r. 15A

- (2) If any party fails to comply with an order for discovery or production of documents then, without prejudice to paragraph (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 for the attachment of the party disobeying 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 paragraph (3) who fails without reasonable excuse to give notice thereof to his client shall be liable to attachment.

[Rule 15 inserted in Gazette 28 October 1996 p.5678.]

15A. Certificate by solicitor

At or immediately before the trial the solicitor having conduct of the action on behalf of a party must deliver to the Court or to a Judge at the trial or hearing a certificate signed by that solicitor and addressed to the Court stating that the duty of discovery has been fully explained to that party and, if that party is a corporation, identifying the individual, or individuals to whom it was explained.

[Rule 15A inserted in Gazette 26 August 1994 p.4412.]

16. Revocation and variation of orders

E. O.24, R.17.

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

[Heading inserted in Gazette 28 October 1996 p.5678.]

Discovery etc. from non-parties and potential parties

[Heading inserted in Gazette 28 October 1996 p.5678.]

1. Interpretation

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 in Gazette 28 October 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 in Gazette 28 October 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.

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- (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 in Gazette 28 October 1996 pp.5679-80.]

4. Discovery from a 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 in Gazette 28 October 1996 p.5680.]

5. Discovery from a 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 in Gazette 28 October 1996 pp.5680-81.]

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 in Gazette 28 October 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 in Gazette 28 October 1996 p.5681.]

Order 27 Interrogatories

1. Discovery by interrogatories

Cf. W.A. O.XXX, RR.1, 1A.

- (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) The statement referred to in paragraph (2) shall be in accordance with Rule 4 and must be attested by the solicitor for the party interrogated or by a person having authority to take affidavits for use in the Court.
- (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 in Gazette 24 January 1995 p.270;
28 October 1996 p.5681.]*

2. Answers

Cf. Vic. O.31, R.8.

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.

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3. Note as to party required to answer

Cf. E. O.26, R.3.

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. Statement in answer

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 objection

Cf. H.Ct. O.32, R.7.

- (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 in Gazette 15 June 1973 p.2248.]

6. Statements, etc. — by whom made

Cf. W.A. O.XXX, R.10.

- (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 Crown or an officer of the Crown sued or suing in his official capacity — by an officer of the Crown;
 - (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 paragraph (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 paragraph (2) a party to which paragraph (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 the relevant subparagraph, and has knowledge of the facts.

7. Order for answers or further answers

Cf. Vic. O.31, R.11. Cf. W.A. O.XXX, R.5.

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

Cf. E. O.26, R.6.

- (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 paragraph (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 for the attachment of the party disobeying 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.

9. Use of answers in evidence

Cf. E. O.26, R.7. Cf. W.A. O.XXX, R.14.

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. Revocation and variation of orders

Cf. E. O.26, R.8.

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 parties

Cf. W.A. O.XXX, R.15.

- (1)
 - (a) 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.
 - (b) 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.
 - (c) 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 paragraph (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*.

2. Inspection of physical objects

Ib. R.16.

- (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.

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- (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

[Heading inserted in Gazette 26 March 1993 p.1841.]

Case flow management powers of the Court

[Heading inserted in Gazette 26 March 1993 p.1841.]

1. Interpretation

In this Order, unless the contrary intention appears —

“**Mediation Registrar**” means a Registrar appointed by the Chief Justice under Rule 2(r)(i);

“**mediator**” means a person approved by the Chief Justice under Rule 2(r)(ii);

“**standard times**” means the standard times prescribed under Rule 4(2).

[Rule 1 inserted in Gazette 26 March 1993 p.1841; amended in Gazette 20 April 1993 pp.2103-4; 28 October 1996 p.5682.]

2. Court may review any case

- (1) In any proceedings the Court may at any time of its own motion on notice to the parties or upon the hearing of a summons for directions or other application review the progress of the proceedings and make such orders or give such directions to lead to their efficient and timely disposal as it may consider just and expedient and, without limiting the generality of that power, may —
- (a) require the parties to any proceedings to attend before the Court;
 - (b) dispense with pleadings altogether or order such pleadings as it deems appropriate;
 - (c) direct the mode by which particular facts may be proved at trial;

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- (d) order that evidence of any particular fact, to be specified in the order, shall be given at the trial by statement on oath of information and belief, or by production of documents or entries in books or by copies of documents or entries or otherwise as the Court may direct;
- (e) dispense with any interlocutory proceedings or steps;
- (f) require the parties or counsel to file and exchange memoranda before the hearing of any interlocutory proceeding in order to clarify the matters in issue before the hearing;
- (g) where appropriate deal with applications or hold conferences by way of a telephone or video conference link-up;
- (h) where appropriate deal with applications, and the evidence in relation to them, by way of telegram, facsimile, telex message, or courier post;
- (i) give directions to assist the convenience of the parties and witnesses;
- (j) make use of video tapes, film projection, computers and other equipment as the Court sees fit in the proceedings;
- (k) make arrangements for the more speedy and effective recording of evidence;
- (l) give directions as to the manner in which the parties shall defray the costs of giving effect to any directions under this Rule;
- (m) direct that a party serve on the other parties at such times as shall be directed, a signed written statement of the proposed evidence in chief of each witness to be called by that party;
- (n) direct that a signed written statement referred to in paragraph (m) or any part of it stand as the evidence in chief of the witness;

- (o) direct that a party intending to produce a plan, photograph or model at trial shall at a time to be directed, serve on the other party a notice in writing specifying the plan, photograph or model, stating where and when it may be inspected, and requiring the other party to serve upon him or her, within 7 days of service of the notice, a written notification agreeing or refusing to agree to the admission in evidence without further proof of the plan, photograph or model;
- (p) direct that where a party gives notification that he or she refuses to agree to the admission of a plan, photograph or model without further proof, and the plan, photograph or model is admitted into evidence at the trial as part of the case of the party serving the notice under paragraph (o), the party giving the notification shall pay any costs of proving the plan, photograph or model unless the trial judge otherwise orders;
- (q) on any terms suitable, direct at any time that the parties confer on a “without prejudice” basis for the purpose of resolving or narrowing the points of difference between them;
- (r) direct that a —
 - (i) Registrar appointed by the Chief Justice to be the Mediation Registrar; or
 - (ii) person approved by the Chief Justice to be a mediator,may conduct the conference;
- (ra) in relation to a conference conducted by a mediator, give such directions as it considers just and expedient but shall not, without consent of the parties, direct that a conference take place where a party would become liable to remunerate a mediator;
- (s) direct that experts, whose reports have been exchanged pursuant to Order 36A consult on a “without prejudice”

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basis, for the purpose of narrowing any points of difference between the experts and identifying any remaining points of difference; and

- (t) require that an application for an adjournment be supported by the affidavits of such persons as the Court shall direct.
- (2) A direction that parties attend a mediation conference does not operate as a stay of proceedings, unless otherwise ordered.
- (3) No order or direction shall be made under this Rule that amends, cancels, or is inconsistent with, a case management direction made under Order 29A, except under Order 29A Rule 13.

[Rule 2 inserted in Gazette 26 March 1993 pp.1841-3; amended in Gazette 20 April 1993 p.2104; 28 October 1996 p.5682.]

3. Mediation conferences

- (1) In the absence of any other order —
 - (a) mediation conferences will take place at the time and place as directed;
 - (aa) each party shall, subject to any directions, take such steps as may be necessary to ensure that the mediation conference occurs as soon as possible;
 - (b) each party shall attend the conference or if a party is not a natural person, a representative of that party familiar with the substance of the litigation and with authority to compromise it, and the solicitor or counsel, if any, representing each party;
 - (ba) each party's costs of and incidental to a mediation conference shall be the party's costs in the cause, unless it is ordered otherwise or 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;

- (bb) the fees and expenses of any mediator who is not a Mediation Registrar shall be paid by the parties in equal shares, unless it is ordered otherwise or the parties agree;
 - (c) within 2 weeks after the conclusion of the conference, the plaintiff shall lodge with the Court a report, signed by or on behalf of each party —
 - (i) confirming that the conference has occurred as directed; and
 - (ii) recording the substance of any resolution or narrowing of the points of difference between the parties resulting from the conference.
- (2) A Mediation Registrar or a mediator —
- (a) shall not, unless the parties agree, report to the Court on a mediation conference;
 - (b) whether or not the parties agree, may report to the Court on any failure by a party to cooperate in a mediation conference; but the report shall not be disclosed to the trial judge except for the purposes of determining any question as to costs.

[Rule 3 inserted in Gazette 26 March 1993 p.1843; amended in Gazette 20 April 1993 p.2104; 28 October 1996 pp.5682-3.]

3A. Application of Rules 4 and 4A

Rules 4 and 4A do not apply to any action, cause or matter to which Order 29A applies.

[Rule 3A inserted in Gazette 28 October 1996 p.5683.]

4. Compliance with standard times

- (1) A Registrar appointed by the Chief Justice to be the Case Management Registrar may exercise the powers conferred on him under this Rule.

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- (2) The powers shall be exercised on the basis that cases to which this Rule applies should be conducted in accordance with the standard times prescribed in the Table to this paragraph and that extensions of standard times should only be permitted for good reason which shall not include the consent of the parties.

Table

	Standard times	
Item		Time
1.	In an action — from the issue of the writ to entry for trial	9 months
2.	In proceedings commenced by originating summons to which appearance is required —from the issue of the originating summons to application for the appointment for the attendance of the parties for the hearing of the summons	6 months

- (3) The Case Management Registrar has power —
- (a) to extend standard times of his own motion or upon the request in writing of a party;
 - (b) to call upon the parties to explain in writing why standard times have not been followed, at such times as he may require;
 - (c) to issue a summons to all the parties to the proceedings to explain why the entry or application for appointment has not occurred within the standard time and to direct the parties to file such affidavits in response to the summons at such times as he shall think fit;
 - (d) on the return of the summons referred to in subparagraph (c), to —
 - (i) make an order extending the standard time in relation to the proceedings;

- (ii) give such directions to lead to the efficient and timely disposal of the proceedings as he considers just and expedient; and
 - (iii) make such orders as to the payment of costs of the parties appearing before him on an indemnity basis to be fixed as he thinks fit, payable within 14 days.
- (e) to exercise the powers as to self-executing orders and costs given under subparagraph (f) if a party fails to attend in obedience to a summons or affidavits are not filed by a party as directed;
 - (f) if the standard time is extended under subparagraph (d) but the entry or application for appointment does not occur within the extended time, to issue a further summons to the parties to explain why it has not occurred and to further extend the standard time and to give such further directions and make such further orders (other than for attachment or committal) to secure the occurrence of that event, including such self-executing orders for judgment, striking out pleadings or otherwise and such costs orders as he may consider necessary and in particular to exercise the powers of the Court under Order 66 Rule 5;
 - (g) for the purposes of this Order to exercise all the powers of the Court in relation to the admission of evidence and when there is no solicitor on the record for a party which is a body corporate, to permit a person who is not a solicitor to represent the body corporate.
- (4) Where the Case Management Registrar makes a request under paragraph (3)(b) the parties and their solicitors shall provide him with the information he requires within the time specified and shall serve the same upon every other party.

[Rule 4 inserted in Gazette 26 March 1993 pp.1843-4; amended in Gazette 24 October 1995 p.4917; 28 October 1996 p.5683.]

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4A. Failure to comply with standard times deemed in certain circumstances

Where a cause, matter or issue is entered for trial and —

- (a) the entry for trial is countermanded; or
- (b) the action is struck out of the list,

that cause, matter or issue is deemed to be a cause, matter or issue —

- (c) which has not been entered for trial; and
- (d) with which there has been a failure to comply with standard times which have been extended in accordance with Rule 4(3)(d).

[Rule 4A inserted in Gazette 29 June 1993 p.3166; amended in Gazette 26 August 1994 p.4412.]

5. Summons for directions

- (1) A summons for directions may be taken out by any party in any cause or matter at any time before entry for trial or thereafter by leave of the Court, but if the defendant is required to appear in the proceedings it may be taken out only after he has appeared.
- (2) The summons shall specify the orders or directions which are sought.
- (3) A summons for directions shall not be taken out for directions that amend or cancel or are inconsistent with a case management direction made under Order 29A.

[Rule 5 inserted in Gazette 26 March 1993 pp.1844-5; amended in Gazette 28 October 1996 p.5683.]

6. Directions hearings

- (1) The parties to proceedings and their advisers shall give such information and produce such documents on any directions hearing as the Court may reasonably require, unless the information or documents are subject to privilege.

- (2) The Court shall adjourn any directions hearing from time to time until the conclusion of the cause or matter.
- (3) Where practicable a party shall apply at the hearing of the summons for any order or directions which he may desire in relation to any matter capable of being dealt with on an interlocutory application in the action and shall give the other parties 2 clear days' notice specifying those orders or directions which differ from the orders or directions sought by the summons.
- (4) Any application subsequent to a summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons on 2 clear days' notice to any other party stating the ground of the application and specifying the orders or directions sought.

[Rule 6 inserted in Gazette 26 March 1993 p.1845.]

Order 29A — Case management

[Heading inserted in Gazette 28 October 1996 p.5684.]

Part 1 — Preliminary

[Heading inserted in Gazette 28 October 1996 p.5684.]

1. Application

- (1) The Order applies to cases commenced on or after 1 November 1996 other than —
 - (a) a case that is entered in the Expedited List under Order 31A; and
 - (b) a case that the Chief Justice directs is to be included in the Long Cause List.
- (2) This Order does not prevent the Court making a direction under Order 29 Rule 2 in a case to which this Order applies.
- (3) The fact that a direction is made by the Court under Order 29 Rule 2 in a case to which this Order applies does not prevent the application of this Order to that case.

[Rule 1 inserted in Gazette 28 October 1996 p.5684.]

2. Interpretation

In this Order, unless the contrary intention appears —

“**case**” means any action, cause, or matter, that is an original proceeding between a plaintiff and a defendant;

“**case management direction**” is defined in Rule 3;

“**enforcement order**” is defined in Rule 4;

“**mediator**” means a person approved as such by the Chief Justice, or a Mediation Registrar (as defined in Order 29).

[Rule 2 inserted in Gazette 28 October 1996 p.5684.]

3. Case management directions

- (1) A case management direction is a procedural direction for the purpose of leading to the efficient and timely disposal of the proceedings.
- (2) A case management direction may —
 - (a) dispense with all or any or any further pleadings;
 - (b) order specified pleadings to be filed;
 - (c) dispense with any interlocutory pleadings or steps;
 - (d) direct that a certificate of readiness is not required for the purposes of Order 33 or Order 58 Rule 19;
 - (e) direct the parties or counsel to file and exchange memoranda before the hearing of any interlocutory application in order to clarify the matters in issue before the hearing;
 - (f) direct that an interlocutory application be dealt with, or a conference be held, by telephone, videophone or other similar means of communication;
 - (g) direct that an interlocutory application be dealt with, and any evidence in relation to it be provided, by fax, telegram, telex, courier post or other similar means;
 - (h) give directions as to the use of videotapes, films, computers and other equipment in any interlocutory proceeding;
 - (i) give directions for the speedier and more effective recording of evidence at any interlocutory proceeding;
 - (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 a conference directed under subparagraph (j) be conducted by a mediator; but shall not, without the consent of the parties, direct that a conference take place

where a party would become liable to remunerate a mediator;

- (l) in relation to a conference directed under subparagraph (f), set the terms or conditions for the conference and deal with anything in relation to the conference;
- (m) direct that experts, whose reports have been exchanged under Order 36A, confer on a “without prejudice” basis for the purpose of identifying, resolving and narrowing the points of difference between them;
- (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;
 - (ii) stating where and when it may be inspected; and
 - (iii) requiring B to serve A, within 7 days after the service of the notice, a written notice agreeing or refusing to agree to the admission in evidence of the object without further proof of it;
- (o) direct a solicitor for a party to give the party a memorandum stating —
 - (i) the approximate costs and disbursements of the party to the date of the memorandum;
 - (ii) the estimated future costs and disbursements of the party to but not including the trial;
 - (iii) the estimated length of the trial and the estimated costs and disbursements of the trial;
 - (iv) the estimated party and party costs that would be payable by the party if the party were unsuccessful at trial;

- (p) in exceptional circumstances direct that an application by a party under this Order operate as a stay of proceedings;
 - (q) in exceptional circumstances or if not to do so would frustrate the appeal, direct that an appeal against a Case Management Registrar's decision under this Order operate as a stay of proceedings;
 - (r) direct that an application for an adjournment of any proceeding be supported by affidavits of specified people;
 - (s) give directions to assist the convenience of the parties or witnesses;
 - (t) give directions as to the manner in which the parties shall defray the costs of giving effect to any case management direction;
 - (u) direct that a specified case management direction be complied with by a set date.
- (3) A case management direction shall not order the attachment or committal of a person.
- (4) A case management direction is not enforceable by writ of attachment or order of committal.

*[Rule 3 inserted in Gazette 28 October 1996 pp.5685-7;
amended in Gazette 16 July 1999 p.3188.]*

4. Enforcement orders

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

(d) an order under Order 66 Rule 5.

[Rule 4 inserted in Gazette 28 October 1996 p.5687.]

5. Inconsistencies with other Rules

If a Rule of this Order is inconsistent with these Rules, the Rule of this Order prevails.

[Rule 5 inserted in Gazette 28 October 1996 p.5687.]

Part 2 — Case management conferences

[Heading inserted in Gazette 28 October 1996 p.5688.]

6. Status conference

- (1) A Case Management Registrar shall summons all parties to a case to attend a status conference before such a Registrar.
- (2) The status conference shall be held within 21 days after the first appearance is entered in the case or at a later time decided by a Case Management Registrar.
- (3) If within 6 months after a case is commenced an affidavit of service of the writ, originating motion or originating summons has been filed but no appearance has been entered in the case, a Case Management Registrar may summons the plaintiff to a status conference.
- (4) The status conference shall be held even if, at the time of the conference, not all parties to the case have been served with the originating process or have entered appearances.
- (5) At the status conference the Case Management Registrar is to review the documents on the Court file and inquire into these matters:
 - (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, why;
 - (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 a conference of the parties with a mediator is needed and if so, when;
 - (g) the likely length of the trial; and
 - (h) any other matter relevant to ensuring the case is managed in accordance with Order 1 Rule 4B.
- (6) At the status conference the Case Management Registrar may at the request of a party or the parties or on the Registrar's own initiative —
- (a) subject to Order 60A, make any interlocutory order that the Registrar thinks fit;
 - (b) make any case management directions that the Registrar thinks fit;
 - (c) make any enforcement orders that the Registrar thinks fit;
 - (d) make an order that Rule 7 does not apply to the case.
- (7) A Case Management Registrar may adjourn the status conference from time to time.

*[Rule 6 inserted in Gazette 28 October 1996 pp.5688-9;
amended in Gazette 16 July 1999 p.3188.]*

7. Case evaluation conference

- (1) Subject to any order made under Rule 6(6)(d), a Case Management Registrar shall summons all parties to a case to attend a case evaluation conference before such a Registrar.

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- (2) The case evaluation conference shall be held within 28 weeks after the initial appearance to the summons to the status conference or at a later time decided by a Case Management Registrar.
- (3) The case evaluation conference shall be held even if, at the time of the conference, not all parties to the case have been served with the originating process or have entered appearances.
- (4) At the case evaluation conference the Case Management Registrar is to review the documents on the Court file and inquire into these matters:
 - (a) the state of the pleadings and if at that time, they are not closed, why;
 - (b) whether a conference of the parties with a mediator is needed and if so, when;
 - (c) the content of any reports by experts that have been or may be exchanged under Order 36A and whether a conference between them is needed;
 - (d) whether the case, at the time of the listing conference, will be ready for trial and if not, why;
 - (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 them to give their evidence; and
 - (g) the administrative resources likely to be needed for the trial.
- (5) At the case evaluation conference the Case Management Registrar may at the request of a party or the parties or on the Registrar's own initiative —
 - (a) subject to Order 60A, make any interlocutory order that the Registrar thinks fit;

- (b) make any case management directions that the Registrar thinks fit;
 - (c) make any enforcement orders that the Registrar thinks fit.
- (6) A Case Management Registrar may adjourn the case evaluation conference from time to time; but not to a date on or after the date of the listing conference.

*[Rule 7 inserted in Gazette 28 October 1996 pp.5689-90;
amended in Gazette 16 July 1999 p.3188.]*

8. 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; and
 - (d) whether the case in all respects is ready to go to trial.
- (4) At the listing conference the Judge may —
 - (a) make any directions under Order 29 Rule 2 that the Judge thinks fit;
 - (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 8 inserted in Gazette 28 October 1996 pp.5690-1.]

Part 3 — General

[Heading inserted in Gazette 28 October 1996 p.5691.]

9. Other parties to be served within 24 hours

If under this Order a document has to be filed and served, a copy of the document shall be served within 24 hours after it is filed.

[Rule 9 inserted in Gazette 28 October 1996 p.5691.]

10. Who is to attend conferences

- (1) A conference required or directed under this Order, other than a listing conference, shall be attended by each party to the case and the solicitor or counsel, if any, representing each party, unless ordered otherwise.
- (2) If a party is not a natural person, a representative of the party familiar with the substance of the case and with authority to compromise it shall attend.
- (3) If there is no solicitor on the record for a party that is a body corporate, the Case Management Registrar or Judge presiding at the conference may permit a person who is not a solicitor to represent the party.

[Rule 10 inserted in Gazette 28 October 1996 pp.5691-2.]

11. Mediation conferences

- (1) If parties are directed to attend a mediation conference, each party shall, subject to any directions, take such steps as may be necessary to ensure that the conference occurs as soon as possible.
- (2) Each party's costs of and incidental to a mediation conference shall be the party's costs in the cause, unless it is ordered otherwise or 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.
- (3) The fees and expenses of any mediator who is not a Mediation Registrar are to be paid by the parties in equal shares, unless it is ordered otherwise or the parties agree.
- (4) Within 2 weeks after the conclusion of a mediation conference the plaintiff shall lodge with the Court a report, signed by or on behalf of each party —
 - (a) confirming that the conference has occurred as directed; and
 - (b) recording the substance of any resolution or narrowing of the points of difference between the parties achieved as a result of the conference.
- (5) A mediator —
 - (a) shall not, unless the parties agree, report to the Court on a mediation conference;
 - (b) whether or not the parties agree, may report to the Court on any failure by a party to cooperate in a mediation conference; but the report shall not be disclosed to the trial judge except for the purposes of determining any question as to costs.
- (6) A direction that parties attend a mediation conference does not operate as a stay of proceedings, unless otherwise ordered.

[Regulation 11 inserted in Gazette 28 October 1996 pp.5692-3.]

12. Applications at case management conferences

- (1) A party to a case may at any time apply to a Case Management Registrar —
 - (a) for any interlocutory order that under Order 60A a Case Management Registrar has jurisdiction to make;
 - (b) for any case management direction to be made under this Order;
 - (c) to have a case management direction made by a Case Management Registrar amended or cancelled.
- (2) The application is to be made by filing an application in Form No. 18A and serving it on the other parties.
- (3) A Case Management Registrar, on receipt of the application —
 - (a) may deal with the application or refer it to a Master under Order 60A Rule 3, without requiring the parties to attend a hearing; or
 - (b) subject to Order 60A Rule 3, may deal with the application at the status conference or the case evaluation conference (as the case may be) and for that purpose may relist such a conference.

[Rule 12 inserted in Gazette 28 October 1996 p.5693.]

13. Judges and Masters may amend or cancel directions

A Judge or a Master at any interlocutory proceeding, or a Judge at trial, who is satisfied there are exceptional reasons for doing so, may amend or cancel a case management direction made by a Case Management Registrar.

[Rule 13 inserted in Gazette 28 October 1996 p.5693.]

14. Non-compliance with case management direction: duty to notify etc.

- (1) A party to a case shall forthwith file, and serve on the other parties, a notice of any non-compliance by another party with an

interlocutory order or a case management direction made in respect of the case by a Case Management Registrar, or with a direction made under this Order by a Master or a Judge.

- (2) A Case Management Registrar, on receipt of such a notice or on becoming aware of such a non-compliance, may relist the status conference or the case evaluation conference (as the case may be), unless such a conference is already listed.

[Rule 14 inserted in Gazette 28 October 1996 p.5694.]

15. Cases that are struck out etc.

If a case is entered for trial and —

- (a) the entry for trial is countermanded; or
- (b) the case is struck out of the list,

this Order (other than Rule 6) again applies to the case and for that purpose a Case Management Registrar shall again summons all parties to attend a case evaluation conference under Rule 7.

[Rule 15 inserted in Gazette 28 October 1996 p.5694.]

Order 30

Admissions

1. Admission of other party's case

Cf. W.A. O.XXXI, R.1. E. O.27, R.1.

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

Cf. W.A. O.XXXI, R.4. E. O.27, R.2.

- (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

Cf. W.A. O.XXXI, R.6. E. O.27, R.3.

- (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. Admission and production of documents

Cf. E. O.27, R.4.

- (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) Paragraph (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.

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- (4) Paragraphs (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.

5. Notice to admit documents

Cf. E. O.27, R.5.

- (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 paragraph (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 paragraph (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.

Order 31

Special cases and stated cases

1. Questions of law

Cf. W.A. O.XXXIII, R.1.

- (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 Full Court.
- (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 in Gazette 15 June 1973 p.2248.]

2. Preliminary question of law

Ib. R.2.

- (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.

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3. Preparation of case

Ib. R.3.

- (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 lodge at the Central Office 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, lodge such copies.

4. Person under disability — leave to set down

Cf. W.A. O.XXXIII, R.4.

- (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 paragraph (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.

5. Entry of special case for argument

Ib. R.5.

- (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 an office 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.

6. Agreement as to payment of money and costs

Cf. W.A. O.XXXIII, R.6.

- (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 Full Court: (see 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 Full Court.

8. Cases stated outside the Court

- (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 or the Full Court.
- (2) Every case to which this Rule applies shall be entered for argument before the Court or the Full Court as the case may require, 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.

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- (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 or the Full Court, as the case may be, 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 or Full 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 or the Full Court.

Order 31A

[Heading inserted in Gazette 23 February 1990 p.1153.]

Expedited List

[Heading inserted in Gazette 23 February 1990 p.1153.]

1. Interpretation

In this Order —

“**Expedited List**” means a list of expedited causes kept by the Principal Registrar;

“**Expedited List Judge**” means a judge appointed by the Chief Justice;

“**Expedited Proceeding**” means a cause or matter entered in the Expedited List.

[Rule 1 inserted in Gazette 23 February 1990 p.1153.]

2. Entry into Expedited List

- (1) A cause or matter shall not be entered in the Expedited List except upon the order of an Expedited List Judge.
- (2) Any party to a cause or matter, may at any time after the commencement of the cause or matter, call upon the other party or parties to show cause before an Expedited List Judge in Chambers, why the cause or matter should not be entered in the Expedited List.
- (3) An Expedited List Judge may order the cause or matter to be so entered.
- (4) A party which desires to have a cause or matter entered in the Expedited List shall apply for entry at the earliest possible time by summons on notice to the other parties supported by an affidavit setting out, in summary form —
 - (a) the nature of the dispute;
 - (b) the issues likely to arise;

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- (c) the basic contentions between the parties, if known; and
- (d) the reasons why the cause or matter should be entered in the Expedited List.

[Rule 2 inserted in Gazette 23 February 1990 p.1153.]

3. Heading of documents

The heading of every document filed or issued in an Expedited Proceeding shall show the words “Expedited List”.

[Rule 3 inserted in Gazette 23 February 1990 p.1153.]

4. Timetable

- (1) Within 7 days after the day of the making of an order entering a cause or matter in the Expedited List, the party obtaining the order shall file and serve a summons for directions pursuant to Order 29 Rule 5.
- (2) The application shall include a timetable for all steps necessary for an expedited trial of the Expedited Proceeding, as well as all other directions sought.
- (3) A party who has been served with an application for directions under paragraph (1) shall, 2 clear days before the return day of the summons for directions, file and serve on the applicant and all other parties to the Expedited Proceeding a memorandum stating —
 - (a) the directions to which the party consents;
 - (b) the directions which the party intends to oppose;
 - (c) where the party intends to oppose a direction, a brief statement of the grounds of opposition;
 - (d) whether or not the party intends to oppose the proposed timetable;
 - (e) where the party intends to oppose the proposed timetable, a brief statement of the grounds of opposition;

- (f) any modification suggested by the party to the proposed timetable; and
- (g) any directions sought by the party.

[Rule 4 inserted in Gazette 23 February 1990 pp.1153-4; amended in Gazette 26 August 1994 p.4414.]

5. Directions

- (1) An Expedited List Judge may, at any time, of his own motion require the parties to an Expedited Proceeding to attend a directions hearing.
- (2) An Expedited List Judge may, at any time, of his own motion, exercise the powers contained in Order 3 Rule 5.
- (3) An Expedited List Judge may, of his own motion or otherwise, give any directions which could be given by the Court under Order 29 Rule 2, and may give any procedural directions as he thinks fit, whether or not inconsistent with any other provision of these Rules, for the speedy and inexpensive determination of the real questions between the parties.
- (4) Without limiting the generality of paragraph (3), an Expedited List Judge may —
 - (a) dispense with other pleadings or further pleadings;
 - (b) dispense with any interlocutory proceedings or steps;
 - (c) require the parties or counsel to file and exchange memoranda before any hearing of the Expedited Proceeding in order to clarify the matters in issue before the hearing;
 - (d) where appropriate deal with applications or hold conferences by way of a telephone or video conference link-up;
 - (e) where appropriate deal with applications, and the evidence in relation to them, by way of telegram, facsimile, telex message, or courier post;

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- (f) give directions to assist the convenience of the parties and witnesses;
 - (g) change the venue of the trial, or adjourn the trial part heard to continue at a different venue;
 - (h) make use of video tape, film projection, computers and other equipment as he see fit in the proceeding;
 - (i) make arrangements for the more speedy and effective recording of evidence;
 - (j) appoint any person authorised in law to administer an oath to any witness giving evidence in any manner envisaged by this Rule;
 - (k) give directions as to the manner in which the parties shall defray the costs of giving effect to any direction under this paragraph;
 - (l) direct that a party serve on the other parties, at times within the discretion of the Expedited List Judge, a signed written statement of the proposed evidence in chief of each witness to be called by that party; and
 - (m) direct that a signed written statement referred to in paragraph (l) or any part of it stand as the evidence in chief of the witness.
- (5) A direction under this Rule shall not be enforceable by writ of attachment of order of committal.
- (6) Any interlocutory order or direction made by an Expedited List Judge may be varied or revoked, in whole or in part, by an Expedited List Judge or by the Court at the trial.
- (7) An Expedited List Judge may hear any interlocutory matter relating to an Expedited Proceeding, or may refer the matter to another Judge or Master for hearing who shall exercise all powers of the Expedited List Judge.

[Rule 5 inserted in Gazette 23 February 1994 p.1154; amended in Gazette 30 November 1990 pp.5900-1.]

6. Amendment to pleadings

- (1) Unless an Expedited List Judge otherwise orders —
 - (a) any party to an Expedited Proceeding may without leave amend any pleading filed within 7 weeks before the day fixed for the commencement of the trial; and
 - (b) any other party may without leave make consequential amendments within 7 working days from service of the amendment.
- (2) Within 7 days after the service on a party of a pleading amended under this Rule that party may apply to the Expedited List Judge to disallow the amendment.
- (3) Where the Expedited List Judge hearing an application under this Rule is satisfied that if an application to make the amendment in question had been made under Order 21 Rule 5 at the date when it was made under this Rule, leave to make the amendment or part of the amendment would have been refused, he shall order the amendment or that part of it to be struck out.
- (4) Any order made on an application under this Rule may be made on such terms as to costs as the Expedited List Judge thinks fit.
- (5) The Expedited List Judge shall, when exercising his discretion to grant or refuse leave to make an amendment, take into account any injustice that may be caused by the amendment, directly or indirectly, affecting the position of the Expedited Proceeding in question in the Expedited List.

[Rule 6 inserted in Gazette 23 February 1990 pp.1154-5.]

7. Adjournments

If an application is made to an Expedited List Judge or the Court at the trial for an adjournment of the trial of an Expedited Proceeding, the Judge, when exercising his discretion under Order 34 Rule 4 shall take into account any injustice that may

be caused by the adjournment affecting the position of the Expedited Proceeding in the Expedited List.

[Rule 7 inserted in Gazette 23 February 1990 p.1155.]

8. Interrogatories

- (1) Order 27 Rule 1(1) shall not apply to an Expedited Proceeding.
- (2) An Expedited List Judge may, in his discretion, give leave to any party to an Expedited Proceeding to file and serve upon any other party, within the period limited by the Expedited List Judge for this purpose, a notice requiring the party served to answer interrogatories relating to any matter in question between the interrogating party and the party served.
- (3) A party required under paragraph (2) 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 Order 27 Rule 1(2) and the verifying affidavit, if requested, and serving on the interrogating party within the same time a copy of the document or, as the case may be, of each document filed.

[Rule 8 inserted in Gazette 23 February 1990 p.1155; amended in Gazette 28 October 1996 p.5694.]

9. Plan, photograph or model

- (1) A party intending to produce a plan, photograph or model at trial shall at a time to be directed by the Expedited List Judge serve on the other party a notice in writing —
 - (a) specifying the plan, photograph or model;
 - (b) stating where and when it may be inspected; and
 - (c) requiring the other party to serve upon him, within 7 days of service of the notice, a written notification agreeing or refusing to agree to the admission in evidence without further proof of the plan, photograph or model.

- (2) Where a party gives notification that he refuses to agree to the admission of a plan, photograph or model without further proof, and the plan, photograph or model is admitted into evidence at the trial as part of the case of the party serving the notice under paragraph (1), the party giving the notification shall pay any costs of proving the plan, photograph or model unless the trial Judge otherwise orders.

[Rule 9 inserted in Gazette 23 February 1990 p.1155.]

10. Mediation

- (1) An Expedited List Judge may, on any terms he thinks fit, direct at any time that the parties confer on a “without prejudice” basis for the purpose of resolving or narrowing the points of difference between them.
- (2) In the absence of any other order —
- (a) the conference will take place at the time and place as directed;
 - (b) each party shall attend the conference or if a party is not a natural person, a representative of that party familiar with the substance of the litigation and with authority to compromise it, and the solicitor or counsel, if any, representing each party;
 - (c) within 2 weeks after the conclusion of the conference, the plaintiff will lodge with the Associate to the Expedited List Judge, a report, signed by or on behalf of each party —
 - (i) confirming that the conference has occurred as directed; and
 - (ii) recording the substance of any resolution or narrowing of the points of difference between the parties resulting from the conference.
- (3) An Expedited List Judge may direct that the Principal Registrar should conduct the conference.

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- (4) An Expedited List Judge, may on any terms he thinks fit, direct that experts, whose reports have been exchanged pursuant to Order 36A, consult on a “without prejudice” basis, for the purpose of narrowing any points of difference between the experts and identifying any remaining points of difference.
- (5) A direction under this Rule shall not be enforceable by writ of attachment or order of committal.

[Rule 10 inserted in Gazette 23 February 1990 pp.1155-6.]

11. Referees

- (1) An Expedited List Judge may of his own motion or on application by any party refer any question or issue of fact in an Expedited Proceeding to a Referee and direct the Referee to make a report.
- (2) An Expedited List Judge may give any instructions he thinks fit to the Referee in relation to a reference under paragraph (1) and to the report.
- (3) An Expedited List Judge may —
 - (a) determine the amount of the fees to be paid to a Referee; and
 - (b) direct how, when and by whom the whole or any part of the fees referred to in subparagraph (a) are to be paid.
- (4) An Expedited List Judge may give directions for the provision —
 - (a) of services of officers of the Court; and
 - (b) of Court rooms and other facilities,for the purpose of any reference to a Referee.
- (5) Where a Referee is appointed under paragraph (1) the Expedited List Judge may give directions with respect to the conduct of proceedings under the reference.

- (6) Evidence before the Referee —
 - (a) may be given orally or in writing; and
 - (b) shall, if the Referee so requires, be given on oath or affirmation or by affidavit.
- (7) Evidence additional to the evidence taken before the Referee may not be adduced before the Court except with the leave of the Court.
- (8) An Expedited List Judge or the Judge at the trial of the Expedited Proceeding may, of his own motion or on application by any party or a Referee set aside or vary any order under paragraph (1) or paragraph (5).
- (9) To the extent that it is not inconsistent with this Rule, Order 35 shall apply to the appointment of a Referee by an Expedited List Judge.

[Rule 11 inserted in Gazette 23 February 1990 p.1156.]

12. Entry for trial

- (1) An Expedited Proceeding shall be entered for trial in accordance with the directions of an Expedited List Judge.
- (2) Order 33 shall not apply to Expedited Proceedings.
- (3) Where an order is made that an Expedited Proceeding be entered for trial, the party obtaining the order shall forthwith file a formal entry for trial.

[Rule 12 inserted in Gazette 23 February 1990 p.1156.]

13. Removal from the Expedited List

An Expedited List Judge may at any time, on the application of any party or on his own motion, order that an action in the List be removed from the List.

[Rule 13 inserted in Gazette 23 February 1990 p.1156.]

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14. Inconsistencies with other Rules

Where any of the Rules of this Order are inconsistent with these Rules the Rules of this Order, in relation to Expedited Proceedings, shall prevail.

[Rule 14 inserted in Gazette 23 February 1990 p.1156.]

Order 32

Place and mode of trial

1. Place of Trial

Cf. W.A. O.XXXIV, R.1. Cf. S.A. O.36, R.1.

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 in Gazette 27 August 1976 p.3223.]

2. Application for trial by jury

W.A. O.XXXIV, R.2.

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

Cf. W.A. O.XXXIV, R.3.

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

Cf. E. O.33, R.3. Cf. W.A. O.XXXIV, R.8.

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

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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

Cf. W.A. O.XXXIV, R.8. Cf. E. O.33, R.4(2).

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 by a single Judge

Cf. W.A. O.XXXIV, R.9.

A trial of a question or issue of fact with a jury shall be by a single Judge.

7. Disposal of action

Cf. E. O.33, R.7.

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.

Order 33

Entry for trial

1. Time for entering action

W.A. O.XXXIV, R.10.

Subject to Rule 8, a cause, matter or issue may be entered for trial by the plaintiff —

- (a) when the pleadings are closed;
- (b) at any time after the issues of fact have been stated; or
- (c) in the case of trial on affidavit, after the time for closing the evidence has expired.

2. When plaintiff in default, other party may act

ib. R.11.

- (1) Where the plaintiff neglects to enter the cause, matter or issue for trial, any party on the record who is entitled to be heard generally or on any issue may —
 - (a) subject to Rule 8, enter the cause, matter or issue for trial; or
 - (b) apply to the Court for an order dismissing the cause or matter for want of prosecution so far as concerns the plaintiff's claim or the issue raised by the plaintiff against the party so applying.
- (2) On an application 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) For the purpose of this Rule, the plaintiff has neglected to enter a cause, matter or issue for trial where he does not make the entry within 4 weeks after the requirements of Rule 1(a), (b) or (c) (whichever shall be applicable) have been satisfied.

3. Notice of entry

Ib. R.12.

- (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) This Rule does not affect the provisions of Order 13, Rule 7(2) and (3).

4. Form of entry for trial

Ib. R.13.

- (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. Time to elapse before hearing

Ib. R.14.

A cause, matter or issue shall not be tried before the expiration of 14 days from the day of entry unless the party to whom notice of trial is given has consented or is under terms to accept shorter notice of trial, or the Court otherwise orders.

6. Entry for Perth

Ib. R.15.

Entry for trial at the civil sittings in Perth shall not operate for any particular sittings, but shall be deemed to be for the day fixed by the proper officer, or by order of the Court.

7. Entry for Circuit Court

Ib. R.16.

Entry for trial in a Circuit Court shall be for the first sittings to be held 28 days next after the entry is made, unless the Court otherwise orders.

[Rule 7 amended in Gazette 24 June 1977 p.1914.]

8. Certificate of readiness for trial required

Ib. R.17.

- (1) A party shall not enter a cause or issue for trial unless he is ready for trial and has filed a certificate of readiness.
- (2) The certificate referred to in paragraph (1) —
 - (a) shall be in such form and contain such information as the Chief Justice shall direct from time to time; and
 - (b) shall be signed personally and in his own name by the solicitor for the party making the entry or by that party where he is not represented by a solicitor.
- (3) A copy of the certificate shall be served with the notice of trial.

8A. Affidavit of service of notice of entry for trial

Within 7 days of filing a notice of entry for trial, the party entering the cause, matter or issue for trial shall file an affidavit of service of the notice of entry on all the other parties on the record, unless all the other parties have filed a certificate acknowledging receipt of the notice of entry.

[Rule 8A inserted in Gazette 29 June 1993 p.3167.]

8B. Application for adjournment to Judge in charge of Civil List

- (1) Subject to paragraph (2) after a cause, matter or issue has been entered for trial an application for —
 - (a) adjournment of the trial;

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- (ab) an order under Rule 9 countermanding the entry;
- (b) amendment of pleadings; or
- (c) an interlocutory application,

must only be made to the Judge in charge of the Civil List or his or her nominee.

- (2) Notwithstanding paragraph (1) where a Judge has been appointed to manage a cause, matter or issue pursuant to an order made under Order 29 Rule 2, an application referred to in paragraph (1) must be made to that Judge.

[Rule 8B inserted in Gazette 29 June 1993 p.3167; amended in Gazette 28 October 1996 p.5694.]

9. Application to countermand entry

Ib. R.18.

- (1) Within 14 days after a party has entered a cause, matter or issue for trial and has served notice of trial, any other party on the record who is entitled to be heard generally or on any issue may apply by summons on 2 clear days' notice to the party who has made the entry for an order countermanding the entry.
- (2) Unless otherwise ordered, the summons filed should be supported by affidavit or affidavits.
- (3) A party entitled to apply for an order under paragraph (1) who has failed to apply successfully for such an order within the time limited thereby shall be deemed to be ready for trial.
- (4) Where a party (whether applicant or respondent) is represented by a solicitor, that solicitor, or another solicitor who is conversant with the matter, shall attend personally on the return of the summons. It shall not be sufficient for a clerk in the solicitor's employment to attend on his behalf.
- (5) On the return of the summons the Court may countermand the entry or allow it to stand, or direct that the entry take effect upon

the happening of certain events or at the expiration of such period as it may fix; or it may make such other order or give such other direction as it thinks proper.

(6) Unless otherwise ordered the costs of the summons shall be costs in the cause.

(7) This Rule does not affect the provisions of Rule 11(1).

*[Rule 9 amended in Gazette 9 November 1973 p.4164;
30 November 1984 p.3951; 29 June 1993 p.3167;
28 October 1996 p.5695.]*

10. After entry no interlocutory applications without leave

Ib. R.19.

(1) Where a cause, matter or issue has been entered for trial, no further interlocutory applications shall be made by a party for or in relation to any of the following matters —

- (a) amendment of pleadings or filing of further pleadings;
- (b) joinder or substitution of parties;
- (c) particulars;
- (d) interrogatories, discovery or inspection or the disclosure or non-disclosure of expert evidence; or
- (e) taking of evidence before a special examiner or on commission,

without the leave of the Court.

(2) Paragraph (1) does not limit the power of the Judge at the trial to make orders for or in relation to any of the matters referred to in that paragraph.

[Rule 10 amended in Gazette 13 October 1978 p.3698.]

11. No withdrawal from list after date fixed except by leave

Ib. R.20.

- (1) At any time before a date of trial has been fixed, entry for trial may be countermanded by leave of the Court on terms as to costs or otherwise as may appear just.
- (2) Once a date of trial has been fixed, no withdrawal from the list or adjournment shall be made except by order of the Court; but an action that has been settled may be withdrawn from the list upon production to the proper officer before the trial commences of a consent in writing signed by the parties.

[Rule 11 amended in Gazette 29 June 1993 p.3167.]

12. Fixing dates of trial

Ib. R.21.

- (1) Subject to any order of the Court, dates of hearing of all causes, matters and issues shall be fixed by the proper officer in accordance with the practice of the Court.

[(2) repealed]

Chief Justice may give directions

- (3) Nothing in this Order shall prejudice any powers of the Chief Justice to give directions —
 - (a) specifying the lists in which causes, matters or issues or causes, matters or issues of any class or description, are to be entered for trial; and providing for the keeping and publication of the lists;
 - (b) providing for the fixing of a date for the trial of any cause, matter or issue that has been entered;
 - (c) as to the making of applications (whether to a Court or a Judge or to an officer of the Court) to fix, vacate or alter any such date and, in particular, requiring any such

application to be supported by an estimate of the length of the trial and any other relevant information; and

- (d) providing for the holding of callovers of causes, matters and issues which have been entered for trial but in respect of which dates of hearing have not been fixed.

*[Rule 12 amended in Gazette 15 June 1973 p.2248;
9 November 1973 p.4164.]*

13. Re-listing for further consideration

Ib. R.22.

- (1) Any trial adjourned for further consideration may be re-listed for hearing on the written request of the party having the conduct thereof or of any other party entitled to bring the same on for hearing, or on the order of a Judge.
- (2) Where the further consideration is requested by a party he shall on the day of making such request obtain an appointment for further consideration not less than 10 days ahead and on the same day shall give notice thereof to the other parties on the record.
- (3) Any such request may be in Form No. 19 and any such notice may be in Form No. 20 with such variations as the circumstances may require.

14. Papers for the Judge

Ib. R.23.

- (1) The party making an entry for trial shall deliver to the proper officer 2 copies in book form (one of which shall be for the use of the Judge at the trial) of each of the following documents —
 - (a) the pleadings and any affidavits ordered to stand as pleadings;
 - (b) any request or order for particulars and the particulars given;

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- (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 trial then, subject to any order of the Court 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 2 further copies of the whole of the pleadings as amended.
 - (3) Where the pleadings are amended at trial a party shall, if so ordered, file 2 further copies of the whole of the pleadings as amended.
 - (4) All copies of pleadings required by this Rule to be delivered or 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 in Gazette 10 January 1975 p.50.]

Order 34

Proceedings at trial

1. Failure of both parties to appear

Cf. E. O.35, R.1(1).

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. Non-appearance of either party

Cf. E. O.35, R.1(2). Cf. W.A. O.XXXIV, RR.24, 25.

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

Cf. W.A. O.XXXIV, R.26.

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

Ib. R.27.

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 the trial

Cf. E. O.35, R.7.

- (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 paragraphs.
- (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 submit written submissions instead of or as adjuncts to their closing addresses.

[Rule 5 amended in Gazette 28 October 1996 p.5695.]

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;
 - (b) any such direction must not detract from the principle that each party is entitled to a fair trial;
 - (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;
 - (d) the complexity or simplicity of the case;
 - (e) the number of witnesses to be called by the parties;
 - (f) the volume and character of the evidence to be led;
 - (g) the state of the Court lists;
 - (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 in Gazette 28 October 1996 pp.5695-6.]

6. Evidence in mitigation of damages in libel or slander

W.A. O.XXXIV, R.30. Cf. E. O.82, R.7.

In actions for libel or slander, 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 libel or slander 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 furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

7. Inspection by Judge or jury

Cf. W.A. O.XLIX, RR.5, 6. Cf. E. O.35, R.8.

- (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 paragraph (1), he may authorise the jury to inspect it also.

8. Judgment at or after trial

Cf. W.A. O.XXXIV, R.32.

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

Cf. W.A. OXXXIV, R.33.

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

Cf. H.Ct. O.36, R.33.

- (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 paragraph (1) shall be communicated to the Taxing Officer by the associate or other officer as the case may be.

11. Entry of findings of fact on trial

W.A. O.XXXIV, R.34.

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 in Gazette 13 October 1978 p.3698;
30 November 1984 p.3952.]*

13. Exhibits

Cf. E. O.35, R.11.

- (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 in Gazette 13 October 1978 p.3698.]

14. Custody of exhibits after trial

Cf. H.Ct. O.70, R.16.

- (1) The associate shall, subject to any order of the Court, retain the exhibits in an action for 21 days from the day on which judgment is given.
- (2) If within the period mentioned in paragraph (1) an appeal to the Full Court has been instituted, the associate shall deliver the exhibits to the Principal Registrar who shall, subject to paragraph (3), retain them until the appeal has been disposed of.
- (3) Where an appeal has been instituted and the Principal Registrar is satisfied, after giving not less than 10 days' notice to all parties to the appeal, that it is unlikely to proceed to a hearing, the Principal Registrar may cause to be delivered or transmitted to a party or his solicitor, or to the person who produced them, the exhibits put in by that party or produced by that person.

*[Rule 14 amended in Gazette 13 October 1978 p.3698;
14 December 1979 p.3870; 1 March 1994 p.785.]*

15. Duty of parties to uplift exhibits

Cf. E. O.35, R.12.

- (1) Where no appeal is instituted within the time mentioned in Rule 14(1), or where an appeal is instituted, then upon the disposal of that appeal, subject to Rule 15B(1), it shall be the duty of the solicitor for each party to an action, or the party himself, if appearing in person, to apply forthwith to the associate or to the Principal Registrar, as the case may be, for the return of the exhibits put in at the trial by that party.
- (2) If the solicitor or party fails to comply with paragraph (1), the associate or Principal Registrar, as the case may be, shall, subject to any order of the Court, cause to be delivered or transmitted to that solicitor or party the exhibits put in by the party.

- (3) This Rule is subject to the provisions of the High Court Rules providing for the retention and transmission of exhibits in appeals from the Supreme Court.

*[Rule 15 amended in Gazette 14 December 1979 p.3870;
1 March 1994 p.785.]*

15A. Return of document or object to the person who produces the document or object

- (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 in Gazette 1 March 1994 p.785.]

15B. Return of exhibit to the person who produces the exhibit

- (1) If an appeal is not instituted within the time mentioned in Rule 14(1), or if an appeal is instituted, then upon the disposal of that appeal, the associate or Principal Registrar, as the case may be, must cause a document or object, belonging to a person who is not a party to the action which has been put in as an exhibit during the trial of an action, to be delivered or transmitted to the person named in the subpoena, if it was produced pursuant to a subpoena, and otherwise to the person who produced the exhibit.
- (2) This Rule is subject to the provisions of the High Court Rules providing for the retention and transmission of exhibits in appeals from the Supreme Court.

[Rule 15B inserted in Gazette 1 March 1994 p.785.]

16. Death of party before judgment is given

Cf. E. O.35, R.9.

- (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) Paragraph (1) does not affect the power of the Court to make orders under Order 18, Rule 7(2).

17. Impounded documents

Cf. W.A. O.XL, R.34.

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 Full Court 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.

18. Assessment of damages by a Master

Cf. Supreme Court Act 1935, s.51(2). Cf. W.A. O.XXXIV, R.49.

- (1) This Rule applies where the Court orders that the amount of damages for which final 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) The directions as to service on the defendant of notice of the day fixed for the assessment of damages contained in Order 13, Rule 7 shall apply mutatis mutandis to an assessment or inquiry under this Rule.

*[Rule 18 amended in Gazette 9 November 1973 p.4162;
30 November 1984 p.3951.]*

19. Damages to time of assessment

Cf. W.A. O.XXXIV, R.50.

- (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) Paragraph (1) applies to the assessment of damages under this Order or otherwise.

20. Writ of inquiry not to be used

Ib. R.48.

No writ of inquiry as to damages shall be issued in any cause or matter.

Order 35

Assessors and Referees

1. Trial with assessors

Cf. W.A. O.XXXIV, R.36.

Trials with assessors shall take place in such manner and upon such terms as the Court shall direct.

2. Trial before a Referee

Ib. R.38.

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

Ib. R.39.

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

Ib. R.40.

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. No power to imprison

Ib. R.41.

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 the Court

Ib. R.42.

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 report

Ib. R.43.

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.

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8. Adoption, etc. of report where further consideration adjourned

Ib. R.44.

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. Application to adopt or vary report

Ib. R.45.

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

Ib. R.46.

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 in Gazette 2 July 1982 p.2316; amended in Gazette 30 November 1984 p.3951.]

Order 36

Evidence: General

1. General rule — oral examination

Cf. E. O.38, R.1. Cf. W.A. O.XXXV, R.1.

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

Cf. E. O.38, R.2. Cf. W.A. O.XXXV, R.1; O.XXXVI, R.1.

- (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 paragraph (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.

3. Evidence of children and other witnesses

- (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 in Gazette 30 October 1992 pp.5310-11.]

4. Reception of plans, etc. in evidence

Cf. E. O.38, R.5.

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 may be revoked

Ib. R.7.

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 in Gazette 13 October 1978 p.3698.]

6. Trials of issues, references, etc.

Ib. R.8.

The foregoing Rules of this Order apply to trials of issues or questions of fact or law, and assessments of damages as they apply to the trial of actions.

7. Depositions as evidence

Ib. R.9. Cf. W.A. O.XXXV, RR.17, 24.

- (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

Cf. E. O.38, R.10. W.A. O.XXXV, R.3; O.LXI, R.6.

- (1) Office 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 an office copy of that document without further proof unless the contrary is shown.

9. Evidence at trial may be used in subsequent proceedings

W.A. O.XXXV, R.24.

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

Ib. R.2.

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

W.A. O.XXXV, R.6. Cf. E. O.38, R.13.

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. Writ of subpoena: form and issue

Cf. W.A. O.XXXV, R.25. Cf. E. O.38, R.14.

- (1) A writ of subpoena —
 - (a) *ad testificandum* shall be in the form of Form No. 21;
 - (b) *duces tecum* shall be in the form of Form No. 22, unless it is a subpoena for which leave to serve the subpoena in New Zealand is to be sought pursuant to Order 39A in which case the writ of subpoena shall be in accordance with Form No. 23.

- (1a) A notice in accordance with —
 - (a) Form 22A, if the person to whom the writ of subpoena is addressed is not in prison;
 - (b) Form 22B, if the person to whom the writ of subpoena is addressed is in prison; or
 - (c) Form 23A, if the person to whom the writ is addressed is to be served by leave of the Court under Order 39A,

informing the person of his rights and obligations in respect of the writ of subpoena, must be attached to the writ of subpoena, or a copy of the writ of subpoena.

- (2) Where it is intended to sue out a writ of subpoena, a praecipe for that purpose in accordance with Form No. 24 must first be filed containing the number of names inserted in the writ of subpoena, the name and address of the party issuing it, if he is acting in person or the name or firm and business address of that party's solicitors, and if the solicitor is agent only, the name or firm and business address of his principal.

- (3) A writ of subpoena is issued upon its being sealed by an officer of the Central Office.

- (4) With the leave of the Court a writ of subpoena *duces tecum* may require the person to produce the document or object concerned

to the Court on a date before the date of the trial so that the party suing out the writ may inspect the document or object.

- (5) When giving leave or at any other time, the Court may order —
- (a) the party suing out the writ of subpoena or any other party to attend the Court to inspect the document or object produced within a set period; and
 - (b) that the document or object be returned to the person who produced it after it has been so inspected or after the set period, whichever happens first.
- (6) A document or object so produced shall be delivered into the custody of the Court and, if not returned under an order made under paragraph (5), shall be produced at the trial by the officer of the Court who has custody of it.
- (7) If a document or object is returned to a person under an order made under paragraph (5) and the party who sued out the writ of subpoena or any other party wants the document or object produced at the trial, the party shall give the person at least 14 days notice of the date when it is to be produced, unless the Court orders otherwise.
- (8) Subject to any order of the Court, if a party does not give notice under paragraph (7) the person who produced the document or object is released from the writ of subpoena duces tecum.

*[Rule 12 amended in Gazette 1 March 1994 p.786;
28 October 1996 pp.5696-7; 16 July 1999 pp.3188-9.]*

13. Subpoena for attendance in chambers

Cf. W.A. O.XXXV, R.27. Cf. E. O.32, R.7.

A writ of subpoena to compel the attendance of a witness for the purpose of proceedings in chambers may be issued upon the production of a note from a Judge, or a Master, as the case may be, authorising the issue of the writ.

[Rule 13 amended in Gazette 30 November 1984 p.3951.]

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14. Number of names

Cf. E. O.38, R.15.

- (1) Every subpoena other than a subpoena duces tecum may contain the names of 2 or more persons.
- (2) The name of only one person shall be included in a subpoena duces tecum.

15. Amendment of writ of subpoena

Cf. E. O.38, R.17.

Where a writ of subpoena has not been served, a mistake in any person's name or address in such writ may be corrected by the person suing out such writ, and the writ may be re-sealed in correct form upon the filing of a second praecipe under Rule 12(2) indorsed with the words "amended and re-sealed".

15A. Time for service

- (1) Service of a writ of subpoena is effective only if the period between service and the day on which the person to whom the writ of subpoena is addressed is required to comply with the subpoena is not less than —
 - (a) 14 days; or
 - (b) such shorter period as the Court may, on application, allow.
- (2) The Court may allow a shorter period only if it is satisfied that —
 - (a) the giving of the evidence likely to be given by the person to whom the subpoena is addressed, or the production of a document or thing specified in the subpoena, is necessary in the interests of justice; and
 - (b) there will be enough time for the person to —
 - (i) comply with the subpoena without hardship or serious inconvenience; and

- (ii) make an application under Rule 18.
- (3) In granting an application the Court —
 - (a) is to impose a condition that the subpoena not be served after a specific day; and
 - (b) may impose other conditions.

[Rule 15A inserted in Gazette 1 March 1994 p.786.]

16. Service of writ of subpoena

Ib. R.17.

- (1) A writ of subpoena must be served personally, and service shall not be valid unless effected within 12 weeks after the date of issue of such writ.
- (2) Service of the writ of subpoena is effective only if —
 - (a) a copy of the relevant notice prescribed under Rule 12(1a); and
 - (b) in a case where an application under Rule 18 is granted, a copy of the order granting the application,are attached to the writ of subpoena, or copy of the writ of subpoena, served.
- (3) At the time of service of a writ of subpoena on a person, the person shall be offered or paid conduct money reasonably sufficient to cover the person's expenses in travelling to and from the court.

[Rule 16 amended in Gazette 1 March 1994 pp.786-7; 28 October 1996 p.5697.]

16A. Early compliance with subpoena duces tecum

- (1) A person served with a writ of subpoena duces tecum may comply with the writ's requirement to produce documents or objects by giving them and a written list describing them together with a copy of the subpoena, to the Registrar at least 2 days before the date when the writ requires them to be produced.

- (2) The documents or objects and list may be given to the Registrar by the person in person or by causing them to be delivered to the Registrar, by post or otherwise, at least 2 days before that date.
- (3) On receiving the documents or objects and the list the Registrar shall issue a receipt to the person.
- (4) The Registrar shall produce the documents or objects to the court at the trial or hearing concerned.

[Rule 16A inserted in Gazette 28 October 1996 p.5698.]

17. Duration of writ of subpoena

Subject to Rule 12(8) and 16A, a writ of subpoena remains in force in respect of a person named in it from the date of issue until the person is released by the Court or, if not released, until the conclusion of the trial or hearing concerned.

[Rule 17 inserted in Gazette 28 October 1996 p.5698.]

18. Setting aside subpoenas

- (1) The Court may on the application of a person named in a subpoena, set aside the subpoena wholly or in part.
- (2) The application under paragraph (1) must be made by summons which must be served on the party suing out the writ of subpoena.
- (3) This Rule does not apply to a subpoena served, or to be served, by leave of the Court under Order 39A.

[Rule 18 amended in Gazette 16 July 1999 p.3189.]

19. Costs of complying with subpoena

Cf. Fed. Ct. O.39, R.29.

- (1) Where a person named in a subpoena for production of any document or thing is not a party to the proceedings and he

incurs substantial expense or loss in complying with the subpoena, the Court hearing the proceedings may order that the party who requested the issue of the subpoena pay to that person in addition to any amount that the person served with the subpoena is entitled to be paid pursuant to the Fourth Schedule ⁷, an amount that is sufficient to compensate him for any expense or loss that is reasonably incurred or lost by that person in complying with the subpoena.

- (2) Where an order is made under paragraph (1), the Court may fix the amount or direct that the amount be assessed by the Taxing Officer.
- (3) The provisions of Order 66 shall apply, with the necessary modifications, in relation to a taxation under this Rule.

[Rule 19 inserted in Gazette 23 September 1983 p.3798.]

20. Interest for the purposes of section 32 of the Act

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 fixed from time to time under section 142 of the Act in relation to judgment debts.

[Rule 20 inserted in Gazette 26 August 1994 p.4412.]

Order 36A

[Heading inserted in Gazette 13 October 1978 p.3699.]

Expert evidence

[Heading inserted in Gazette 13 October 1978 p.3699.]

1. Interpretation

In this Order —

“action for personal injuries” means proceedings in which a claim is made in respect of personal injuries to a person (including any illness suffered by him and any impairment of his physical or mental condition) or in respect of a person’s death;

“medical evidence” means expert evidence on medical matters;

“medical report” means a report containing medical evidence;

“privilege” means privilege as defined in section 32A of the *Evidence Act 1906*.

[Rule 1 inserted in Gazette 13 October 1978 p.3699.]

2. Medical evidence in actions for personal injuries

- (1) This Rule applies to medical evidence in actions for personal injuries.
- (2) Unless the Court otherwise directs, a party must serve on the other parties, in accordance with this Rule, copies of all medical reports the substance of which that party intends to rely on at the trial or hearing.
- (3) Copies of the medical reports mentioned in paragraph (2) shall be served not later than the following times —
 - (a) where the report is in existence before the action is entered for trial —
 - (i) if the report is that of the party entering the action — the time of entry;

- (ii) if the report is that of another party — the expiration of the time limited by Order 33 Rule 9 for an application to countermand the entry or such later time as may be fixed by an order made on any such application;
 - (b) where the report comes into existence after the action is entered for trial, as soon as practicable thereafter.
- (4) Where the Court gives a direction under paragraph (2), the Court, if satisfied that it is desirable to do so, may direct that, in lieu of serving a copy of any medical report, the substance of all or any medical evidence that a party intends to rely on at the trial or hearing be disclosed in writing to such other parties and within such period as the Court may specify.
- (5) Except with leave of the Court, or pursuant to a direction of the Court, or where all other parties agree, no witness may give medical evidence at the trial or hearing of a cause or matter unless the substance of that evidence has been disclosed in writing to all other parties within the time limited by a direction under paragraph (4) or, where no such direction has been given, a reasonable time before trial.
- (6) Paragraph (5) does not apply where a party has in accordance with paragraph (2) and paragraph (3) served a copy of a medical report containing the substance of the evidence.
- (7) The Court may, if it thinks fit, treat the fact that a medical report contains statements by the party against whose interest the evidence is to be led or hearsay evidence as to the manner in which the personal injuries were sustained, or that it contains other evidence that would not be admissible at the trial, as a sufficient reason for giving a direction under paragraphs (2) or (4) or granting leave under paragraph (5).
- (8) Where a party applies for a direction under paragraph (2), the Court may inspect the report the subject of the application

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without disclosing its contents to any other party; and an affidavit in support of any such application shall not be required.

- (9) Nothing contained in this Rule requires evidence to be disclosed to a defendant who has not entered an appearance.

[Rule 2 inserted in Gazette 13 October 1978 pp.3699-700.]

3. Other expert evidence

- (1) This Rule applies to expert evidence other than medical evidence in actions for personal injuries.
- (2) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of a cause or matter unless the party seeking to adduce the evidence has applied to the Court to determine whether a direction should be given under this Rule and has complied with any direction given on the application.
- (3) The application shall be made —
- (a) if by the party entering the action for trial — before the action is entered; or
 - (b) if by another party — not later than the expiration of the time limited by Order 33 Rule 9 for an application to countermand the entry or at such later time as may be fixed by an order made on any such application.
- (4) Where an application has been made under this Rule the Court, if satisfied that it is desirable to do so, may direct that —
- (a) copy of a report of an expert witness the substance of which a party intends to rely on at the trial or hearing of a cause or matter be served on; or
 - (b) the substance of all or any expert evidence that a party intends to adduce at the trial or hearing be disclosed in writing to,

such other parties and within such period as the Court may specify.

[Rule 3 inserted in Gazette 13 October 1978 p.3700; amended in Gazette 14 December 1979 p.3870.]

4. Exceptions

Rule 2(5) and Rule 3(2) shall not apply to evidence that is permitted to be given by affidavit or shall affect the enforcement under any other provisions of these Rules of a direction given under this Order, but such a direction shall not be enforceable by writ of attachment or order of committal.

[Rule 4 inserted in Gazette 13 October 1978 p.3700.]

5. Limitation of expert evidence

The Court may, at or before the trial or hearing of a cause or matter, direct that the number of medical or other expert witnesses who may be called at the trial or hearing shall be limited as specified by the direction.

[Rule 5 inserted in Gazette 13 October 1978 p.3700.]

6. Disclosure of part of expert evidence

The Court may give a direction under Rule 2 or Rule 3 relating to part only of the report or evidence of an expert witness.

[Rule 6 inserted in Gazette 13 October 1978 p.3700.]

7. Derogation of privilege

Where a party is required by Rule 2 or by a direction given under that Rule or under Rule 3 to disclose any expert evidence, that party may not, after the expiration of the time fixed for disclosure by the Rule or direction, as the case may be, object, on the ground of privilege, to the evidence being disclosed.

[Rule 7 inserted in Gazette 13 October 1978 p.3700.]

8. Mode of application

An application under this Order, if made before trial, shall be made by summons.

[Rule 8 inserted in Gazette 13 October 1978 p.3700.]

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9. Revocation and variation of directions

A direction given under this Order may on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the trial or hearing of the cause or matter.

[Rule 9 inserted in Gazette 13 October 1978 p.3700.]

Order 37

Affidavits

1. Title of affidavits

Cf. W.A. O.XXXVI, R.2. Cf. E. O.41, R.1.

- (1) Subject to paragraphs (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 in Gazette 17 September 1993 p.5054.]

2. Form of affidavit

Cf. W.A. O.XXXVI, RR. 7, 8. Cf. E. O.41, R.1.

- (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.

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- (4) Dates, sums, and other numbers must be expressed in an affidavit in figures and not in words.
- (5) Every affidavit must be signed on each page by the deponent and by the person before whom the affidavit is sworn and that person must also complete and sign the jurat.
- (6) Where an affidavit —
 - (a) consists of more than one page; or
 - (b) has annexures,each page of the affidavit and annexures must be numbered consecutively in the upper right hand corner.
- (7) Where an affidavit has one or more annexures, an index listing the affidavit and the annexures and their respective page numbers 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 annexed to the affidavit and be referred to in the affidavit as being annexed.
- (9) Subject to Rule 9(1), annexures to an affidavit must be bound with it in one or more volumes as may be necessary.
- (10) Except in a case where the Court allows otherwise, the thickness of a volume of an affidavit and its annexures must not exceed 40 millimetres.

[Rule 2 amended in Gazette 16 November 1990 pp.5698-9.]

3. Affidavits by 2 or more deponents

Cf. W.A. O.XXXVI, R.9. Cf. E. O.41, R.2.

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. Affidavits by illiterate or blind persons

Cf. W.A. O.XXXVI, R.13 Cf. E. O.41, R.3.

- (1) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, that person must certify in the jurat that —
 - (a) the affidavit was read by him, or in his presence, to the deponent;
 - (b) the deponent seemed perfectly to understand it; and
 - (c) the deponent made his signature or mark in the presence of that person.
- (2) The affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that the affidavit was read to the deponent and that he appeared to understand it perfectly.

4A. Affidavits by non-English speaking persons

Where a deponent to an affidavit is not sufficiently conversant with the English language to be able to swear an affidavit in English, and it is desired to file the affidavit in another language, the following procedure shall be followed —

- (a) the deponent shall swear the affidavit in the language of the deponent's choice;
- (b) the affidavit shall be translated by a suitably qualified translator;
- (c) the translator shall swear an affidavit setting out the translator's qualifications and verifying the translation;
- (d) the translation and the affidavit in the foreign language shall be exhibited to the affidavit by the translator; and
- (e) the 3 documents shall be filed together.

*[Rule 4A inserted in Gazette 28 February 1992 p.996;
30 June 2000 p.3418.]*

5. Irregularity

Cf. E. O.41, R.4.

- (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 affidavit

Cf. E. O.41, R.5. Cf. H. Ct O.39, R.3.

- (1) Except as provided by Order 14 Rules 2(2) and 4(2) and Order 16 Rules 1(3) and 2(1a), and by paragraph (2) of this Rule, and subject to any order made under Order 29 Rule 2(d) an affidavit must be confined to such facts as the deponent is able of his own knowledge to prove.
- (2) An affidavit used for the purposes of —
 - (a) interlocutory proceedings; or
 - (b) an application under the —
 - (i) *Coroners Act 1996*;
 - (ii) *Surveillance Devices Act 1998*; or
 - (iii) *Witness Protection (Western Australia) Act 1996*,may contain statements of information or belief.
- (2a) An affidavit containing statements of information or belief must set out the sources or grounds of that information or belief.
- (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 in Gazette 5 June 1992 p.2281;
26 August 1994 p.4415; 13 September 1996 p.4568;
28 October 1996 p.5698; 16 July 1999 p.3189.]*

7. Scandalous matter

Cf. W.A. O.XXXVI, R.11. Cf. E. O.41, R.6.

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. Alterations in affidavits

Cf. W.A. O.XXXVI, R.12. Cf. E. O.41, R.7.

- (1) When in the jurat or body of an affidavit there is any interlineation, erasure, or other alteration —
 - (a) the affidavit may nevertheless be filed unless the Court otherwise orders;
 - (b) the affidavit shall not, without the leave of the Court, be read or made use of in any proceeding unless both the deponent and the person before whom the affidavit was sworn have initialled the alteration, and, in the case of an erasure, any words or figures written on the erasure have been re-written in the margin of the affidavit and both the deponent and the person before whom the affidavit was sworn have signed or initialled them.
- (2) In this Rule the term “**proceeding**” includes action, cause, matter and suit.

[Rule 8 amended in Gazette 7 February 1992, pp.685-6.]

9. Exhibits

Cf. E. O.41, R.11. H. Ct. O.39, RR.4, 5.

- (1) A bound register, an account book or other book or any document of an unusual size must not be annexed to the affidavit or referred to therein as being annexed, but must be referred to as an exhibit.

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- (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.

[Rule 9 amended in Gazette 16 November 1990 p.5699.]

10. Affidavits sworn and bonds executed in Western Australia

Cf. W.A. O.XXXVI, R.4; M.C.R. R.233 Vide Supreme Court Act 1935, s.176.

- (1) Any affidavit required for use in any cause or matter depending in or before the Court, or before any Judge or officer of the Court, and any bond or recognisance required to be filed in the Court, may be sworn or executed within the State before a Judge, a District Court Judge, a Master, a senior officer of the Court, a commissioner appointed under section 175 of the Act, or before a Justice of the Peace for Western Australia or for any part or district of Western Australia.

- (1A) In paragraph (1), “**senior officer of the Court**” means —

- (a) a Registrar;
- (b) the sheriff of Western Australia;
- (c) the officers known as Coordinators; or
- (d) the officer known as the Senior Probate Clerk,

or any person for the time being discharging the duties of any of those officers.

- (2) The Court, every Judge, and all officers of the Court shall take judicial notice of the seal or signature, as the case may be, of any person authorised under this Rule to take an affidavit, attached, appended or subscribed to an affidavit.

(3) The commissioner for affidavits before whom an affidavit is sworn may charge the following fees —

	\$
(a) for each oath or affirmation	1.50
(b) where sworn or affirmed at a place more than 2 kilometres from the commissioner's office (in addition to reasonable travelling expenses) —	
for the first oath or affirmation	6.00
for each subsequent oath or affirmation taken at the same time	1.50
(c) for marking each exhibit	0.30
(d) for attesting documents that may be attested by or declared before a commissioner — the same fees as on administering oaths.	

[Rule 10 amended in Gazette 17 December 1971 p.5266; 9 November 1973 p.4162; 7 December 1973 p.4489; 13 October 1978 p.3701; 14 December 1979 p.3870; 2 July 1982 p.2316; 30 November 1984 pp.3951-3; 28 February 1992 p.996.]

11. Affidavits sworn out of Western Australia

Cf. W.A. O.XXXVI, R.6. Vide Supreme Court Act 1935, s.177; also O.1, R.4 supra for interpretation of "Australian diplomatic or consular agent"; "diplomatic agent"; "consular agent".

- (1) Any affidavit for use in the Court or in any other court, or for any purpose or in any way authorised by law, may be sworn and taken in any place out of the State —
- (a) before a commissioner appointed under section 175 of the Act and authorised to act at that place;
 - (b) before —
 - (i) an Australian diplomatic or consular agent; or

- (ii) a diplomatic agent or a consular agent of any part of Her Majesty's dominions, exercising his function at that place;
 - (c) before a judge of a court of that place or a magistrate or justice of the peace of or for that place; or
 - (d) before a notary public.
- (2) Without limiting the generality of paragraph (1), an affidavit to be sworn in a place under the dominion of Her Majesty may also be sworn before a person having authority to administer an oath at that place.

[Rule 11 inserted in Gazette 17 December 1971 p.5266.]

12. Affidavit not to be sworn before a solicitor or his agent etc.

An affidavit is not sufficient if sworn before any solicitor who has participated in any way in the preparation of the affidavit or in the proceedings in which the affidavit is intended to be filed, or before the party himself.

[Rule 12 inserted in Gazette 5 June 1992 p.2281.]

13. Affidavits to be filed

Cf. W.A. O.XXXVI, R.10.

- (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. Special times for filing

Cf. W.A. O.XXXVI, R.18.

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

Cf. W.A. O.XXXVI, R.23.

Every alteration in an account verified by affidavit to be left at Chambers shall be marked with the initials of the Commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure.

Order 38

Evidence by deposition

1. Power to order depositions to be taken

Cf. W.A. O.XXXV, R.4. Cf. E. O.39, R.1.

- (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 paragraph (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 in Gazette 8 February 1991 p.582.]

[2, 3. Repealed in Gazette 8 February 1991 p.582.]

4. Enforcing attendance of witness

Cf. E. O.39, R.4. Cf. W.A. O.XXXV, R.19.

- (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 writ of subpoena in like manner as his attendance, or the production by him of a document at a trial may be enforced.

5. Refusal of witness to attend or be sworn

Cf. E. O.39, R.5. W.A. O.XXXV, R.12.

- (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 paragraph (1) is guilty of contempt of court.

6. Time and place for examination

Cf. E. O.39, R.6. Cf. W.A. O.XXXV, RR.38, 39.

- (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 paragraph (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.

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7. Documents to be given to examiner

Cf. E. O.39, R.7. Cf. W.A. O.XXXV, R.9.

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.

8. Practice on examination

Cf. E. O.35, R.8.

- (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

W.A. O.XXXV, R.8.

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. Examination of additional witnesses

W.A. O.XXXV, R.40.

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. Mode of taking deposition

Cf. W.A. O.XXXV, RR.11, 15, 41.

- (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 paragraph (3) a deposition taken pursuant to paragraph (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 paragraph (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 paragraph (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.

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- (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 sent by him to the Central Office and shall be filed therein.

12. Objection to questions

Cf. W.A. O.XXXV, RR.11, 13, 14. Cf. E. O.39, R.10.

- (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. Special report

Cf. W.A. O.XXXV, R.16. Cf. E. O.39, R.13.

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

Cf. W.A. O.XXXV, R.18. Cf. S.A. O.37, R.19.

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 in Gazette 8 February 1991 p.582.]

15. Perpetuating testimony

Cf. W.A. O.XXXV, RR.34-37. Cf. E. O.39, R.15.

- (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. Examiners' fees

Cf. W.A. O.XXXV, R.43. Cf. E. O.39, R.19.

- (1) An examiner is entitled to charge the fees set forth in the following table —

Table of Examiners' 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.

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- (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 foregoing table.
- (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 in Gazette 21 March 1980 pp.960-1; amended in Gazette 30 November 1984 pp.3951-3.]

17. Payment of examiner's fees

W.A. O.XXXV, RR.42, 45. Cf. E. O.39, R.14.

- (1) An examiner shall not be required to transmit any deposition, to be filed at the Central Office, 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.

18. Application of this Order

This Order does not apply to examinations to which Part IIIB of the *Evidence Act 1905* of the Commonwealth applies.

[Rule 18 inserted in Gazette 20 June 1986 p.2040.]

Order 38A

[Heading inserted in Gazette 8 February 1991 p.582.]

Examination of witnesses outside the State

[Evidence Act 1906, ss.109-14]

[Cwlth. Evidence Act 1905, Part IIIB]

[Heading inserted in Gazette 8 February 1991 p.582.]

1. Interpretation

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 in Gazette 8 February 1991 p.582.]

2. Application of Order

- (1) This Order applies to applications —
 - (a) under sections 110 and 111 of the Act; and
 - (b) under sections 7V and 7W of the *Evidence Act 1905* of the Commonwealth.
- (2) A reference in this Order to a provision in Column 1 of the Table to this subrule, shall, where an application is being made under section 7V or 7W of the *Evidence Act 1905* of the Commonwealth, be taken as a reference to the provision beside it in Column 2 of the Table.

Table

Column 1	Column 2
Provision of the Act	Provision of the <i>Evidence Act 1905</i> of the Commonwealth
109	7T
110	7V

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Column 1	Column 2
Provision of the Act	Provision of the <i>Evidence Act 1905</i> of the Commonwealth
110(1)	7V(1)
110(2)	7V(2)
111	7W

[Rule 2 inserted in Gazette 8 February 1991 p.583.]

3. Applications under sections 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 in Gazette 8 February 1991 p.583.]

4. Application under sections 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 in Gazette 8 February 1991 p.583.]

5. Orders under sections 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 in Gazette 8 February 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 in Gazette 8 February 1991 p.583.]

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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 in Gazette 8 February 1991 p.583.]

Order 39

Taking of evidence for foreign and Australian courts

(Evidence Act 1906, ss. 115-118C)

[Heading inserted in Gazette 8 February 1991 p.586.]

1. Interpretation

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 in Gazette 8 February 1991 p.586.]

2. Applications under section 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.

[Rule 2 inserted in Gazette 8 February 1991 p.586.]

3. Orders under section 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;

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- (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;
 - (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 in Gazette 8 February 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 in Gazette 8 February 1991 p.586; amended in Gazette 26 August 1994 p.4415.]

4A. Examiner's power to administer oaths

A person appointed to obtain evidence may administer oaths.

[Rule 4A inserted in Gazette 8 February 1991 p.586.]

5. Transmission of depositions

Cf. W.A. O.XXXV, R.49. Cf. E. O.70, R.5.

- (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.

- (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 paragraph (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 in Gazette 14 December 1979 p.3870;
8 February 1991 pp.586-7.]*

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.

[Rule 6 inserted in Gazette 8 February 1991 p.587.]

Order 39A

[Heading inserted in Gazette 16 July 1999 p.3189.]

Trans-Tasman proceedings

[Heading inserted in Gazette 16 July 1999 p.3189.]

1. Interpretation

- (1) In this Order, unless the contrary intention appears —
 “the Act” means the *Evidence and Procedure (New Zealand) Act 1994* of the 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 in Gazette 16 July 1999 p.3189.]

2. Application

- (1) This Order applies to proceedings to which the Act applies.
- (2) Subject to this Order, unless the contrary intention appears, these Rules apply to proceedings referred to in this Order.

[Rule 2 inserted in Gazette 16 July 1999 p.3190.]

3. Leave to serve subpoena

- (1) 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.

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- (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;
 - (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;
 - (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;
 - (d) the date by which it is intended to serve the subpoena;
 - (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;
 - (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 14(2) or (3) of the Act.
- (3) Before granting leave under the Act to serve a subpoena, a Judge may require the applicant for leave to undertake to meet the expenses reasonably incurred by the person named, not being a party to the proceeding, in complying with the subpoena, if those expenses exceed the allowances and travelling expenses to be provided to that person at the time of service of the subpoena.

- (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 in Gazette 16 July 1999 pp.3190-1.]

4. Setting aside subpoena

- (1) An application to the Court under section 13 of the Act must be made in accordance with 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 application must —
- (a) be headed with the heading on the copy order of the Court granting leave to serve the subpoena; and
 - (b) be filed, by lodgment or by fax, at the Central Office.
- (4) The application must set out the applicant's address for service in Australia or New Zealand, telephone number and, if applicable, fax number.
- (5) If the application is filed by fax, the Principal Registrar must acknowledge, by fax, the receipt of a clear and legible copy of the application and accompanying affidavit.
- (6) The Principal Registrar must deliver a copy of the application and accompanying affidavit, by mail, or fax, to the address for service of the party who obtained leave to serve the subpoena.
- (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) An objection under section 14(4) of the Act must be made by filing a notice in accordance with Form No. 31B not later than 7 days after —
- (a) if the objection 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.

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- (9) A request under section 14(6) of the Act that is not made in the application must be made by filing a form in accordance with Form No. 31C.

[Rule 4 inserted in Gazette 16 July 1999 pp.3191-2.]

5. Failure to comply with subpoena

- (1) A certificate under section 16 of the Act, in accordance with Form No. 31D, 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 accordance with 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 the subpoena, the order and the notice referred to in section 10(3) of the Act; and
 - (b) an affidavit stating —
 - (i) particulars of the order granting leave to serve the subpoena;
 - (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.

[Rule 5 inserted in Gazette 16 July 1999 p.3192.]

6. Evidence by video link or telephone

- (1) An application for a direction under section 25 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;
 - (b) the nature of the evidence to be taken;
 - (c) the number of witnesses to be examined;
 - (d) the expected duration of the evidence;
 - (e) whether issues of character are likely to be raised;
 - (f) in the case of submissions, the expected duration of the submissions;
 - (g) the facilities available for such a procedure or that can reasonably be made available; and
 - (h) that the requirements of section 26 or 27 of the Act can be met.
- (3) In deciding whether to grant the application, 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 video link or telephone, the Principal Registrar may be directed 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;

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- (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 in Gazette 16 July 1999 pp.3192-3.]

7. Fax copies

If a fax of a document is adduced in evidence under Part 6 of the Act, the party adducing that evidence must file in the Central Office a copy of the fax —

- (a) on paper of durable quality measuring about 295 mm in length and 210 mm in width; and
- (b) on which the writing is permanent,

unless the fax meets those specifications.

[Rule 7 inserted in Gazette 16 July 1999 p.3193.]

Order 40

Court experts

1. Definitions

Cf. E. O.40, R.1. Cf. H.Ct. O.38, R.1.

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. Appointment of expert

Cf. E. O.40, RR.1, 3. Cf. H.Ct. O.38, RR.2, 6.

- (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;
 - (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 paragraph (1)(c) may make provision concerning any experiment or test necessary to enable the Court expert to make a satisfactory report.

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3. Report of Court expert

Cf. E. O.40, R.2. Cf. H.Ct. O.38, R.3.

- (1) The Court expert must send his report to the Court 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.
- (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.

4. Cross-examination

Cf. E. O.40, R.4. Cf. H.Ct. O.38, R.4.

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

Cf. E. O.40, R.5. Cf. H.Ct. O.38, R.8.

- (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

Cf. E. O.40, R.6.

- (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 paragraph (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.

Order 41

Motion for judgment

1. Judgment to be on motion

Cf. W.A. O.XXXVIII, R.1. Cf. H.Ct. O.42, R.1.

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. Judgment after issues tried

Cf. W.A. O.XXXVIII, R.7. Cf. H.Ct. O.42, R.2.

- (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. Where some issues only determined

Cf. W.A. O.XXXVIII, R.8. Cf. H.Ct. O.42, R.3.

- (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 to be set down within one year

Cf. W.A. O.XXXVIII, R.9. Cf. H.Ct. O.42, R.4.

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

Cf. W.A. O.XXXVIII, R.10. Cf. H.Ct. O.42, R.5.

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

Cf. W.A. O.XXXIX, R.1. H.Ct. O.43, RR.1, 2. E. O.42, R.1. Forms Nos. 32-44.

- (1) Every judgment shall be entered by the Principal Registrar in the book to be kept for that purpose in the Central Office.
- (2) If a form of judgment is prescribed in the Second Schedule 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 in Gazette 14 December 1979 p.3870.]

2. Date from which judgment or order takes effect

Cf. W.A. O.XXXIX, R.3. H.Ct. O.43, R.3. E. O.42, R.3.

- (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 perform any act

Supreme Court Act 1935, s.135(1).

Cf. W.A. O.XXXIX, R.5. See Order 46, Rule 4.

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. Judgment on production of affidavit or document

Cf. W.A. O.XXXIX, R.6.

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. Judgment on production of order or certificate

Ib. R.7.

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. 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 in the Central Office when judgment is entered.

*[Rule 6 amended in Gazette 14 December 1979 p.3870;
30 November 1984 p.3951.]*

7. Judgment by consent when party appears by a solicitor

Ib. R.9.

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 his solicitor or agent.

8. Consent of party in person

Ib. R.5.

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

Cf. H.Ct. O.43, R.11.

- (1) A memorandum of satisfaction of a judgment may be entered upon a consent to the entry being filed in the Central Office.
- (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 in Gazette 30 November 1984 p.3951.]

Order 43

Drawing up judgments and orders

1. Drawing up of judgments, etc.

Cf. W.A. O.LXII, R.1.

- (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 in Gazette 14 December 1979 p.3870.]

2. When order need not be drawn up

Cf. W.A. O.LI, R.13. Cf. H.Ct. O.44, R.18. Cf. E. O.42, R.4.

- (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 paragraph (2),

need not be drawn up unless the Court otherwise directs.

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- (2) The acts referred to in paragraph (1)(b) are —
- (a) the issue of any writ, other than a writ of summons for service out of the jurisdiction, 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 paragraph (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 in Gazette 30 November 1984 p.3951.]

3. Authentication of judgments and orders

W.A. O.LXII, R.3.

- (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. Sealed duplicate to be issued

Ib. R.4.

- (1) Every judgment and order shall be kept in the Registry of the Court as a record.
- (2) A duplicate of an order shall, on the day it has been entered, be sealed by the Registrar 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.

[Rule 4 amended in Gazette 1 August 1980 p.2558.]

5. Amendment of order

Ib. R.5.

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.

6. Draft and documents to be lodged

Ib. R.6.

- (1) The party bespeaking a judgment or order shall lodge a draft thereof in the Central Office unless the Registrar dispenses with the draft and permits lodgment of the engrossment in the first instance, and, if so required by the Registrar, the party shall

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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 lodged 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 in Gazette 14 December 1979 p.3870.]

7. Appointment to settle draft

Ib. R.7.

- (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 in Gazette 14 December 1979 p.3870.]

8. Attendance on settling the draft

Ib. R.8.

- (1) The party bespeaking the judgment or order and all parties served with notice under the last preceding Rule 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 in Gazette 14 December 1979 p.3870.]

9. Default of attendance

ib. R.9.

- (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 the last preceding paragraph 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 in Gazette 14 December 1979 p.3870.]

10. Dispensing with appointment

ib. R.10.

Notwithstanding the preceding Rules of this Order, 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 in Gazette 14 December 1979 p.3870.]

11. Registrar's powers and reference to the Court

Ib. R.11.

- (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 in Gazette 14 December 1979 p.3870.]

12. Party to engross

Ib. R.12.

A judgment or order when settled and passed shall be engrossed by the party entering or extracting it.

13. Certificate for special allowance

Ib. R.13.

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 in Gazette 14 December 1979 p.3870.]

14. Entry of judgments and orders

ib. R.14.

- (1) A judgment or order, when settled and passed, shall be filed in the Central Office by the party entering or extracting it and an entry of the filing shall be made in books to be kept for that purpose.
- (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.

15. Application to vary

ib. R.15.

A party may, within 7 days after a draft judgment or order has been settled by the Registrar, 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 in Gazette 14 December 1979 p.3870.]

16. Consent orders

Cf. H.Ct. O.44, R.23.

- (1) The parties to proceedings or their solicitors may file a written consent to the making of an order in those proceedings, other than —
 - (a) an order extending a standard time provided for under Order 29;

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- (b) an order that amends, cancels, or is inconsistent with, a case management direction made under Order 29A; or
 - (c) an order that amends, cancels or is inconsistent with an interlocutory order made by a Case Management Registrar in a case to which Order 29A applies.
- (2) Upon the written consent being filed, the Registrar may settle, sign and seal the order without any other application being made in any case in which in his opinion 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 in Gazette 3 October 1975 p.3769; amended in Gazette 26 March 1993 p.1845; 28 October 1996 p.5699.]

Order 44

Foreign judgments

1. Rules to be subject to provisions of Orders in Council

W.A. O.XXXIXA, R.1.

It is hereby declared pursuant to section 8 (2) of the Act that these Rules are subject to any provisions contained in the relevant Order in Council made under section 6 of the *Foreign Judgments Act 1963* (in this Order referred to as “**the Act**”) for giving effect to any agreement in relation to matters with respect to which there is power to make rules of Court for the purpose of Part II of the Act.

2. Application for registration

Ib. R.2.

- (a) An application under section 7 of the Act, to have a judgment to which Part II of the Act applies registered in the Supreme Court may be made on motion ex parte to the Court.
- (b) The motion paper shall be entitled “In the Matter of the *Foreign Judgements Act 1963*, and an Order in Council thereunder made the (date) 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 ”.
- (c) 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.

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3. Evidence in support of application

Ib. R.3.

- (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;
 - (b) stating to the best of the information and belief of the deponent —
 - (i) that the applicant is entitled to enforce the judgment;
 - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or if the judgment has been satisfied in part, the amount in respect of which it remains unsatisfied;
 - (iii) that at the date of the application the judgment can be enforced by execution in the country of the original court;
 - (iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 9 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 by execution 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 Order in Council extending the Act to the country of the original court.

- (2) Where the sum payable under the judgment is expressed in a currency other than the currency of the Commonwealth of Australia, the affidavit shall also state the amount which that sum represents in the currency of the Commonwealth 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.

4. Security for costs

Ib. R.4.

Save as otherwise provided by any relevant Order in Council 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.

5. Order for registration

Ib. R.5.

- (1) An order for registration of a judgment shall be drawn up by, or on behalf of, the judgment creditor.
- (2) Such order need not be served on the judgment debtor.
- (3) Such order shall state the period after service of the notice prescribed by Rule 7 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 5 amended in Gazette 14 December 1979 p.3870.]

6. Register to be kept

Ib. R.6.

There shall be kept in the Central Office of the Supreme Court a register of the judgments ordered to be registered under the Act.

7. Notice of registration

Ib. R.7.

- (1) Notice in writing of the registration of a judgment shall be served on the judgment debtor. Such service shall be effected 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 the rule applicable to the service of a writ of summons out of the jurisdiction, save that special leave to serve out of the jurisdiction shall not be required.
- (2) The notice of registration shall state —
 - (a) full particulars of the judgment registered and the order for registration;
 - (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;
 - (c) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside;
 - (d) in accordance with the term of the order giving leave to register, within what period of time from the date of

service of the notice an application to set aside the registration, may be made; and

- (e) that execution on the judgment will not issue until after the expiration of that period.

8. Indorsement of service

Ib. R.8.

- (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 thereof shall be indorsed by the person serving the same with the day of the month and 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 any such notice shall state on what day such indorsement was made.

9. Application to set aside registration

Ib. R.9.

- (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.

10. Issue of execution

Ib. R.10.

- (1) Execution shall not issue on a registered judgment until after the expiration of the period which in accordance with the provisions

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of Rule 5(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, execution shall not issue until such application has been disposed of.

ib. R.11.

- (3) The party desirous of issuing an execution upon 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.

11. Determination of certain questions

ib. R.12.

If, whether under the Act or under these Rules, any question arises whether a judgment can be enforced by execution in the country of the original court, or what interest is payable under the judgment under the law of that country, that question shall be determined in accordance with such provisions, if any, in that behalf, as are contained in the Order in Council extending the Act to that country.

12. Certified copy of judgment obtained in this State

ib. R.13.

- (1) An application under section 14 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;

- (b) contain a statement of the grounds on which the judgment was based;
 - (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
 - (d) show that the judgment is not subject to any stay of execution 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 14 of the *Foreign Judgments Act 1963*.

(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;

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- (d) the pleadings, if any, in the proceedings;
- (e) the grounds on 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 12 amended in Gazette 14 December 1979 p.3870.]

Order 44A

[Heading inserted in Gazette 26 January 1993 p.824.]

Registration and enforcement of judgments under the *Foreign Judgments Act 1991 of the Commonwealth*

Foreign judgments

[Heading inserted in Gazette 26 January 1993 p.824.]

1. Interpretation

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 in Gazette 26 August 1994 p.4414.]

2. Application

This Order applies to the registration and enforcement of judgments to which Part 2 of the Act applies.

[Rule 2 inserted in Gazette 26 January 1993 p.824.]

3. Application for registration

- (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____ ”.

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- (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 in Gazette 26 January 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;
 - (b) stating to the best of the information and belief of the deponent —
 - (i) that the applicant is entitled to enforce the judgment;
 - (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;
 - (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 the Commonwealth of Australia, the affidavit shall also state the amount which that sum represents in the currency of the Commonwealth 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 in Gazette 26 January 1993 p.825.]

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 in Gazette 26 January 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.

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- (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 in Gazette 26 January 1993 p.825.]

7. Register to be kept

There shall be kept in the Central Office of the Supreme Court a register of the judgments ordered to be registered under the Act.

[Rule 7 inserted in Gazette 26 January 1993 p.825.]

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;
 - (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;
 - (c) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside;

- (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 in Gazette 26 January 1993 p.826; amended in Gazette 1 March 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 in Gazette 26 January 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 in Gazette 26 January 1993 p.826.]

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11. Enforcement

- (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 in Gazette 26 January 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 in Gazette 26 January 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;
 - (b) contain a statement of the grounds on which the judgment was based;
 - (c) state whether the defendant did or did not object to the jurisdiction, and, if so, the grounds of such objection;
 - (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

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- 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 in Gazette 26 January 1993 pp.827-8.]

Order 45

Accounts and inquiries

1. Summary order for accounts

Cf. W.A. O.XV, RR.1, 2. Cf. E. O.43, R.1.

- (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. Accounts, etc., at any stage

Cf. W.A. O.XXXII, R.2. Cf. E. O.43, R.2.

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

Cf. W.A. O.XXXII, R.8.

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

Cf. W.A. O.XXXII, R.3. Cf. E. O.43, R.3.

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

Cf. W.A. O.XXXII, R.4. Cf. E. O.43, R.4.

- (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 lodge the account at the Central Office, and must notify the other parties forthwith that he has so lodged the account, and of the filing of the affidavit verifying the account, and any supporting affidavit.

6. Mode of vouching accounts

Cf. W.A. O.XXXII, R.5.

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

Cf. W.A. O.XXXII, R.6. Cf. E. O.43, R.5.

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. Just allowances

W.A. O.XXXII, R.9.

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

Cf. W.A. O.XXXII, R.10. Cf. Vic. O.33, RR.9, 10.

- (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 in Gazette 2 July 1982 p.2316.]

10. Distribution of fund before all persons entitled are ascertained

W.A. O.LXV, R.5. Cf. E. O.43, R.8.

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.

Order 46

Enforcement of judgments and orders

(See Supreme Court Act 1935, Part VII)

1. No demand necessary where judgment directs payment of money or transfer of property

W.A. O.XL, R.1.

Where any person is by any judgment or order directed to deliver up or transfer any personal property to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand.

*[Rule 1 amended in Gazette 29 March 1974 p.1041;
10 January 1975 p.51.]*

2. Conditional judgment — waiver

Cf. W.A. O.XL, R.2. Cf. E. O.45, R.10.

A party who has obtained any judgment or order upon condition who does not fulfil that condition is deemed to have abandoned the benefit of such judgment or order, and unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order, or might have been taken if no such judgment or order had been given or made.

3. Judgment on condition: execution

W.A. O.XL, R.9.

Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the

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Court for leave to issue execution against such party. And the Court may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in and action may be tried.

3A. Enforcement of judgments for possession of land

Cf. E. O.45, R.3.

- (1) Subject to the provisions of the Act and of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say —
 - (a) writ of possession;
 - (b) writ of sequestration;
 - (c) writ of attachment or order of committal;
 - (d) writ of restitution.
- (2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was made or given in a mortgage action to which Order 62A applies.
- (3) Leave shall not be granted under paragraph (2) unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.
- (4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

Cf. Supreme Court Act 1935, ss. 22, 144 and 160.

- (5) A writ of possession and a writ of restitution may be executed in the same manner as heretofore.⁵

[Rule 3A inserted in Gazette 10 January 1975 p.51.]

4. When service of copy of judgment etc. necessary before enforcement

Cf. W.A. O.XXXIX, R.5. Cf. E. O.45, R.7.

- (1) In this Rule references to an order shall be construed as including references to a judgment.
- (2) Subject to Order 26, Rule 15(3) and Order 27, Rule 8(3) an order shall not be enforced under section 135 of the Act unless —
- (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and
 - (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.
- (3) Subject to paragraph (2) an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in section 137(2) of the Act unless —
- (a) a copy of the order has been served on the body corporate;
 - (b) a copy of the order has also been served personally on the director or other officer against whose property leave is sought to issue a writ of sequestration, or against whom an order for attachment is sought; and
 - (c) where the order requires the body corporate to do an act, the copy has been so served before the expiration of the time within which the body corporate was required to do the act.

Warning to be indorsed

- (4) In the case of an order requiring a person or body corporate to do an act within a specified time there must be indorsed on the copy of the order served under this Rule a memorandum in the words or to the effect following —

“

If you the within-named A.B. (or A.B. Ltd.) neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same.

”

- (5) Where an order requires a person or body corporate to abstain from doing an act there must be indorsed on the copy of the order served under this Rule a memorandum in the words or to the effect following —

“

If you the within named A.B. (or A.B. Ltd.) disobey this judgment (or order), you (or the said A.B. Ltd.) will be liable to process of execution for the purpose of compelling you to obey the same.

”

- (6) Where an order requires a body corporate to do or to abstain from doing an act, but it is sought to take enforcement proceedings against a director or other officer of that body, there must be indorsed on the copy of the order so served a memorandum in the words or to the effect following —

“

If A.B. Ltd neglects to obey this judgment (or order) by the time therein limited (or in the case of an order to abstain from doing an act, if A.B. Ltd. disobey this judgment (or order)) you X.Y. (a director or officer of the said A.B. Ltd.) will be liable to process of execution for the purpose of compelling the said A.B. Ltd. to obey the same.

”

- (7) Where a copy of an order requiring a person to do an act is required to be served under this Rule, there must be served with it a copy of any order made under Order 3 Rule 5 extending or abridging the time for doing the act.

5. Execution by or against person not being a party

Cf. W.A. O.XL, R.25.

Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party.

6. Matters occurring after judgment: stay of execution, etc.

Cf. W.A. O.XL, R.26. Cf. E. O.45, R.11.

- (1) Any party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or for other relief on the ground of matters which have occurred since the date of the judgment or order and the Court may by order give such relief, and on such terms, as it thinks just.
- (2) Paragraph (1) does not affect the powers of the Court under Order 47 Rule 13.

[Rule 6 amended in Gazette 14 December 1979 p.3870.]

Order 47

Writs of execution: General

1. Interpretation

Cf. W.A. O.XL, R.8. Cf. E. O.46, R.1.

In this Order unless the context otherwise requires the expression “**writ of execution**” includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration, a writ of attachment, and any further writ in aid of any of those writs.

2. Leave required for issue of writ in aid

E. O.46, R.3.

A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

3. Application for leave to issue writ of execution

Cf. E. O.46, R.4. See Supreme Court Act 1935, s.141(2)(3).

- (1) Where it is necessary to obtain leave to issue a writ of execution, the application for leave may be made *ex parte* unless the Court directs that it be made by summons.
- (2) An application for leave to issue execution must be supported by an affidavit —
 - (a) identifying the judgment or order to which the application relates, and if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
 - (b) stating, where the case falls within section 141(2)(a) of the Act, the reasons for the delay in enforcing the judgment or order;

- (c) stating where any change has taken place by death or otherwise in the parties entitled or liable to execution, the change which has taken place since the date of the judgment or order;
 - (d) showing that the applicant is entitled to proceed to execution on the judgment, and that the person against whom it is sought to issue execution is liable to execution on the judgment.
- (3) The Court in granting leave to issue a writ of execution may impose terms.

4. Application for leave to issue writ of sequestration or writ of attachment

Cf. E. O.46, R.5.

- (1) An application for leave to issue a writ of sequestration or a writ of attachment must be made to a Judge by motion.
- (2) An applicant for leave under this Rule must —
 - (a) file notice of the motion showing the grounds of the application; and
 - (b) serve the notice and the affidavits proposed to be used in support of the motion personally on the person whose property is sought to be sequestrated, or who is sought to be attached.
- (3) If the Court thinks it just it may dispense with service under paragraph 2(b).
- (4) An application for leave to issue a writ of attachment may be heard in chambers in any case in which, if the application were for an order of committal, the Judge would be entitled to do so under Order 55 Rule 4(2), but otherwise the application must be heard in open court.

5. Forms of writs of execution

Cf. W.A. O.XL, R.13.

A writ of execution shall be in such of the Forms Nos. 45 to 52 in the Second Schedule as is appropriate in the particular case.

6. Issue of writ of execution

Cf. W.A. O.XL, RR.10, 11, 13. Cf. E. O.46, R.6.

- (1) A writ of execution is issued on its being sealed by the proper officer.
- (2) Every writ of execution shall bear the date of the day on which it is issued.
- (3) Before such a writ is issued the person presenting it shall file a copy thereof signed by or on behalf of the solicitor of the person entitled to execution, or by the person himself if he is acting in person.
- (4) A writ of execution shall not be sealed unless at the time it is presented for sealing —
 - (a) the person presenting it produces the judgment or order on which the writ of execution is to issue or an office copy thereof, and where leave to issue the writ is required, the order granting such leave or an office copy thereof; and
 - (b) the officer authorised to seal the writ is satisfied that the proper time has elapsed to allow the writ of execution to issue.

7. Indorsement of name and address

Cf. W.A. O.XL, R.12.

Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the

writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, or town, and also the name of the street (if any) and the number of the house (if any) of such plaintiff's or defendant's residence, or otherwise describing the plaintiff's or defendant's place of residence.

8. Fees and expenses

Cf. W.A. O.XL, R.14. Cf. Vic. O.42, R.15A.

- (1) In every case of execution the party entitled to execution may levy the poundage, fees, and expenses (including the fixed charge for costs) of execution, over and above the sum recovered.
- (2) In every case of execution against any freehold land or chattel real, or against any land, lease, mortgage or charge the party entitled to execution may, over and above the sum recovered, and in addition to the poundage fees and expenses mentioned in paragraph (1), levy the fees and expenses properly paid on registering the judgment or lodging the writ of fieri facias against the freehold land or chattel real, or against the land, lease, mortgage, or charge sought to be affected by the execution.

[9. *Repealed in Gazette 15 June 1973 p.2248.*]

10. Duration and renewal of writ of execution

Cf. W.A. O.XL, R.19.

- (1) A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided: but such writ may, at any time before its

expiration, by leave of the Court, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof to the sheriff.

- (1A) The provisions of Order 3 Rule 5(2) do not apply to an application to extend the time prescribed by paragraph (1).
- (2) The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as is mentioned in paragraph (1), showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

[Rule 10 amended in Gazette 15 June 1973 p.2248.]

11. Return to writ of execution

Cf. E. O.46, R.9.

- (1) A person at whose request a writ of execution is issued may serve a notice on the sheriff requiring him within the time specified in the notice (being not less than 7 days) to indorse on the writ a statement of the manner in which he has executed the writ and to send to that person a copy of the statement.
- (2) If the sheriff fails to comply with such notice, the person serving it may apply to the Court for an order directing the sheriff to comply with the notice.

12. Sheriff or party may apply for directions

- (1) The sheriff or any party may apply to the Court for directions as to any question or matter arising in the enforcement of any order

or judgment by a writ of execution, and on such application the Court may give such directions as the Court thinks fit.

- (2) The right to apply for directions conferred by paragraph (1) extends to the sequestrators under a writ of sequestration.

13. Power to stay execution

Cf E. O.47, R.1.

- (1) The Court, if satisfied by the judgment debtor or other person liable to execution under a judgment or order —
- (a) that by reason of special circumstances it is inexpedient to enforce the judgment or order; or
 - [(b) deleted]*
 - (c) that if the judgment or order is for the payment of money, the applicant is unable from any cause to pay the money,

may stay the execution for such period and on such terms as the Court thinks fit.

- (2) An application under this Rule which is not made at the time the judgment is given or the order made, must be made by summons supported by an affidavit of grounds, and may be so made although the applicant did not enter an appearance in the action.
- (3) Where the application is made on the ground of the applicant's inability to pay, the affidavit must disclose his income, assets and liabilities.
- (4) The summons and a copy of the affidavit in support must be served on the party entitled to enforce the judgment or order 4 clear days before the return day.
- (5) The Court by a subsequent order may vary or revoke any order staying execution made under this Rule.

[Rule 13 amended in Gazette 7 February 1992 p.686.]

14. Separate writs for money and costs

Cf. W.A. O.XL, R.17; O.XLV, R.3; O.XLVI, R.2. Cf. E. O.47, R.3. Cf. Supreme Court Act 1935, s.130(3).

- (1) Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than 8 days after the first writ.
- (2) A party entitled to enforce a judgment or order for the recovery of or for the delivery of possession of any property (other than money) may if he so elects issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to him by the judgment or order and interest.

15. Order for sale otherwise than by auction

Cf. W.A. O.XLI, RR.6-12. Cf. E. O.47, R.6.

- (1) An application for an order under section 124 of the Act that a sale under an execution may be made otherwise than by public auction may be made by the person at whose instance the writ of execution under which the sale is to be made was issued, or the person against whom the writ was issued (in this Rule called **“the judgment debtor”**), or the sheriff.
- (2) The application must be made by summons and must be supported by an affidavit stating the grounds of the application and the evidence necessary to substantiate them.
- (3) The sheriff (if he is not the applicant) must on the request of the applicant send to him a list (in this Rule called **“the sheriff’s list”**) of the names and addresses of every person at whose instance any other writ of execution against the goods of the judgment debtor has been issued and delivered to the sheriff.

- (4) Where the sheriff is the applicant he must prepare the list mentioned in paragraph (3).
- (5) Not less than 4 clear days before the summons is returnable, the applicant must serve the summons and a copy of the supporting affidavit on each of the other persons by whom the application might have been made, and on every person named in the sheriff's list.
- (6) On the hearing of the application the applicant must produce to the Court the sheriff's list.
- (7) Every person on whom the summons has been served may attend and be heard on the hearing of the application.
- (8) The Court at the hearing of the summons may make such order as to the mode of sale as may be just.
- (9) In this Rule the term "**sheriff**" includes any officer charged with the execution of any writ of execution.

Order 48

Examination of judgment debtors, etc.

1. Order for examination

Cf. W.A. O.XL, R.32. Cf. E. O.48, R.1. Supreme Court Act 1935, s.126(2).

- (1) Where a judgment or order is for the payment of money, the party entitled to enforce it may apply ex parte to the Court for an order that the debtor liable under the judgment or order, or if the debtor is a body corporate, an officer thereof, attend before a Judge or an officer of the Court and be orally examined as to the questions —
 - (a) whether any and, if so, what debts are owing to the debtor; and
 - (b) whether the debtor has any and what other property or means of satisfying the judgment or order,and the Court may make an order for the attendance and examination of the debtor or any other person, and for the production or impounding of any books or documents in the possession of the debtor relevant to the questions aforesaid at the time and place appointed for the examination.
- (2) An order made under this Rule must be served personally on the debtor and on any officer of a body corporate ordered to attend for examination.
- (3) Any difficulty arising under an examination under this Rule before an officer of the Court, including any dispute as to the obligation of the person being examined to answer any questions put to him, may be summarily referred to a Judge who may determine it or give such directions for determining it as he thinks fit.
- (4) In this Rule the term “**Officer**” in relation to a body corporate includes a former officer of the body corporate.

2. Difficulty in enforcing judgment

Cf. W.A. O.XL, R.33. Cf. E. O.48, R.2.

Where, in the case of a judgment or order, other than a judgment or order for the payment of money, a difficulty arises in or about its execution or enforcement, the Court may make an order under Rule 1 for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and Rule 1 shall apply accordingly with the necessary modifications.

3. Examination to be recorded

Cf. E. O.48, R.3.

It is the duty of the officer conducting the examination to take down, or cause to be taken down, in writing the statement made by the debtor or other person at an examination under this Order, and to read it to him, and request him to sign it, and if he refuses to sign the statement the officer shall sign it.

4. Costs

Cf. W.A. O.XL, R.35.

The costs of any application under Rules 1 and 2 and of any proceedings arising therefrom or incidental thereto shall be in the discretion of the Court, or in the discretion of the officer conducting the examination, if the Court shall so direct.

Order 49

Attachment of debts

1. Section 126 of the *Supreme Court Act 1935* to be referred to

Save as appears in these Rules the practice and procedure relating to the attachment of debts is contained in section 126 of the Act.

2. Service of order to show cause

Cf. E. O.49, R.3.

An order nisi under section 126(3) of the Act ordering a garnishee to appear to show cause shall be in Form No. 53 and must at least 7 days before the time appointed thereby for the further consideration of the matter, be served —

- (a) on the garnishee personally; and
- (b) unless the Court otherwise directs, on the judgment debtor.

3. Money in Court

Cf. E. O.49, R.9.

- (1) Garnishee proceedings shall not be taken against money standing to the credit of a judgment debtor in court, but in such case the judgment creditor may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application, be paid to the judgment creditor.
- (2) A copy of any summons issued under this Rule must be served on the Accountant, and the money to which the application relates shall not be paid out of court until after the determination of the application.

- (3) Unless the Court otherwise directs a summons issued under this Rule must be served on the judgment debtor 7 days at least before the day fixed therein for the hearing of the summons.
- (4) The Court on an application under this Rule may make such order with respect to the money in court as it thinks just.
- (5) Where an application is dismissed the applicant must forthwith serve notice of the dismissal on the Accountant.

4. Order absolute — form

A garnishee order absolute under section 126(5) of the Act shall be in such of forms Nos. 54 or 55 as is appropriate in the particular case.

Order 50

Charging orders and stop orders

1. Order charging stocks and shares

See Supreme Court Act 1935, ss.128, 129.

- (1) An order charging stocks or shares may be made by the Court, and the procedure for obtaining such an order shall be such as is directed, and the effect of such an order shall be such as is provided, by the Act.
- (2) An order nisi charging stocks or shares shall be in Form No. 56 and an order absolute shall be in Form No. 57.

[Rule 1 amended in Gazette 9 November 1973 p.4164.]

2. Meaning of “Company” and “stock”

W.A. O.XLIV, R.5.

In the following Rules of this Order the expression “**Company**” includes any public company, whether incorporated or not, and the expression “**stock**” includes shares, securities, and money.

3. Stop notice as to stock

Ib. R.6.

Any person claiming to be interested in any stock standing in the books of a Company may, on an affidavit by himself or his solicitor in Form No. 58 with such variations as circumstances may require, and on filing the same in the Central Office with a notice in Form No. 59 with such variations as circumstances may require, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the Central Office, serve the office copy and duplicate notice on the Company.

4. Claimant's address to be stated

Ib. R.7.

There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent, and that address, subject to Rule 5, shall be his address for service.

5. Change of address

Ib. R.9. Cf. E. O.50, R.11(4).

The address stated under Rule 4 may from time to time be changed by the person by or on whose behalf the affidavit is filed by serving on the Company concerned, a notice to that effect, and as from the date of such notice the address stated therein shall for the purpose of that Rule be the address for service of that person.

6. Effect of stop notice

Cf. W.A. O.XLIV, R.12. Cf. E. O.50, R.12.

- (1) Where the duplicate of the notice filed under Rule 3 has been served on a Company, then so long as the notice is in force the Company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service, a notice informing him of the request for such transfer or payment.
- (2) Where a Company receives a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the person in whose name the stock specified in the notice is standing, the Company shall not by reason only of that notice refuse to register the transfer or make the payment for more than 8 days after receipt of the request except under the authority of an order of the Court.

7. Amendment of stop notice

Cf. W.A. O.XLIV, R.13.

If the person who files a notice under Rule 3 desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the Company a duplicate thereof sealed with the seal of the Central Office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

8. Withdrawal or discharge of notice

Cf. W.A. O.XLIV, R.11. Cf. E. O.50, R.14.

- (1) The person by whom or on whose behalf a notice under Rule 3 was filed may withdraw it by serving a written request for its withdrawal on the Company on which the notice was served.
- (2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be attested by a practitioner.
- (3) The Court, on the application of any person claiming to be interested in the stock to which a notice under Rule 3 relates, may by order discharge the notice.
- (4) An application for an order under paragraph (3) must be made by originating summons which must be served on the person on whose behalf the notice under Rule 3 was filed, but no appearance need be entered to the summons.

9. Stop order where funds in Court

Cf. W.A. O.XLIV, RR.14, 15. Cf. E. O.50, R.10.

- (1) Where any person —
 - (a) has a mortgage or charge on the interest of any person in funds in court; or

- (b) is the assignee of any such interest; or
- (c) is a judgment creditor of the person entitled to that interest,

the Court on the application of such first-mentioned person may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds or any part therefrom, without notice to the applicant.

- (2) If there is a cause or matter relating to the funds in court, an application for an order under this Rule must be made by summons, but otherwise the application must be made by originating summons.
- (3) The summons must be served on every person whose interest might be affected by the order sought, and on the Accountant.
- (4) Without prejudice to the powers and discretion of the Court as to costs, the Court may order the applicant for an order under this Rule to pay the costs of any party to such cause or matter, or of any person interested in those funds, occasioned by the application.
Cf. H.Ct. O.47, R.1(a).
- (5) In this Rule “**funds in Court**” means any money, government security, or annuity, or other securities, including shares, or a part of them, standing or to be placed to the credit of an account in the books of the Court.

10. Order prohibiting transfer of stock

Cf. E. O.50, R.15.

- (1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any stock of any Company, may by order prohibit that company from registering any transfer of such part of that stock as may be specified in the order or from paying any dividend or interest arising therefrom.

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- (2) An application for an order under this Rule may be made by originating summons, and no appearance thereto need be entered.
- (3) The Court may vary or discharge an order made under this Rule on such terms as to costs as it thinks fit.

11. Charging order on money in Court

Cf. E. O.50, R.8.

- (1) For the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person, the Court may by order impose on any interest to which the judgment debtor is beneficially entitled to on any money in court identified in the order, a charge for securing payment of the amount due under the judgment or order and interest thereon.
- (2) Such order shall in the first instance be an order to show cause, stating the time and place for the further consideration of the matter and imposing the charge until that time in any event.
- (3) An application for an order under this Rule must be made ex parte supported by an affidavit.
- (4) Unless the Court otherwise directs a copy of the order to show cause must at least 7 days before the time fixed thereby for the further consideration of the matter, be served on the judgment debtor, and if he does not attend on such further consideration proof of service must be given.
- (5) A copy of the order to show cause must as soon as practicable after the making thereof be served on the Accountant.
- (6) No disposition by the judgment debtor of his interest to any money in court to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

- (7) Until such order is discharged or made absolute the Accountant shall not pay to any person the money in court to which such order relates, except with the authority of the Court.
- (8) On the further consideration of the matter the Court may make the order absolute with or without modifications, or may discharge the order.

[Rule 11 amended in Gazette 26 August 1994 p.4415.]

12. Discharge of charging order

Cf. E. O.50, R.7.

The Court on the application of the judgment debtor or any other person interested in the money in court to which an order under Rule 11 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs as it thinks fit.

Order 51

Receivers

1. Application for receiver and injunction

Cf. E. O.30, R.1.

- (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 paragraph (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 paragraph (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).

2. Appointment of receiver by way of equitable execution

Cf. W.A. O.XLIX, R.17. Cf. E. O.51, R.1.

Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount which may probably be obtained by the receiver and to the probable costs of his appointment, and may direct an inquiry on any of these matters or any other matter before making the appointment.

3. Receiver's security

Cf. W.A. O.XLIX, R.18. Cf. E. O.30, R.2.

- (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) The security referred to in paragraph (2) shall, unless the Court otherwise directs, be by recognisance in Form No. 63 taken before a person authorised to administer oaths for the purposes of the Court, or if the amount for which security is to be given does not exceed \$7 500, by an undertaking.
- (4) The recognisance or undertaking must be filed in the Central Office, and shall be kept as of record until duly vacated.

[Rule 3 amended in Gazette 30 November 1984 p.3953.]

4. Remuneration of receiver

Cf. W.A. O.XLIX, R.18. Cf. E. O.30, R.3.

A person appointed receiver shall be allowed such remuneration, if any, as may be fixed by the Court.

5. Accounts

Cf. W.A. O.XLIX, RR.20, 22, 24. Cf. E. O.30, R.4.

- (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.

- (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 in Gazette 2 July 1982 p.2316.]

6. Payment of balances by receiver

Cf. W.A. O.XLIX, R.20. Cf. E. O.30, R.5.

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

Cf. W.A. O.XLIX, R.23. Cf. E. O.30, R.6.

- (1) Where a receiver fails —
 - (a) to file an account or affidavit;
 - (b) to attend for the passing of any account of his;
 - (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 paragraph (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 fixed from time to time under section 142 of the Act in relation to judgment debts.

[Rule 7 amended in Gazette 2 July 1982 p.2316.]

8. Books to be deposited

When a receivership has been completed, the book containing the accounts shall be deposited in the Central Office.

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 in Gazette 5 June 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

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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 in Gazette 5 June 1992 p.2282.]

Order 52

Interlocutory injunctions, interim preservation of property

1. Application for injunction

Cf. W.A. O.XLIX, RR.6, 13. Cf. E. O.29, R.1.

- (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, preservation or inspection of property

Cf. W.A. O.XLIX, RR.1, 4, 7. Cf. E. O.29, R.2.

- (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 paragraph (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.

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- (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 in Gazette 26 August 1994 p.4415;
28 October 1996 p.5699.]*

3. Power to order taking of samples, etc.

Cf. W.A. O.XLIX, R.4. Cf. E. O.29, R.3.

- (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;
 - (b) the making of any observation of any property;
 - (c) the trying of any experiment on or with any property; or
 - (d) the observation of any process.

- (2) An order under paragraph (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 in Gazette 28 October 1996 p.5699.]

4. Disposal of perishable property, etc.

Cf. W.A. O.XLIX, R.3. Cf. E. O.29, R.4. Cf. H.Ct. O.49, R.2.

- (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;
 - (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 in Gazette 26 August 1994 p.4415;
28 October 1996 p.5699.]*

5. Order for early trial

Cf. W.A. O.XLIX, R.2. Cf. E. O.29, R.5.

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. Recovery of personal property subject to lien

Cf. W.A. O.XLIX, R.9. Cf. E. O.29, R.6.

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

Cf. E. O.29, R.7.

- (1) The Court, on the hearing of an application made under any of the foregoing provisions of this Order, may give directions as to the further proceedings in the cause or matter.
- (2) Where the application is in an action begun by writ the Court may order that the action be before the Court for directions under Order 29 either forthwith, or upon such date as the Court may appoint, and, if it thinks fit, may dispense with the issuing of a summons under that Order.

8. Allowance of income or transfer of property *pendente lite*

Cf. W.A. O.LXIX, R.10. Cf. E. O.29, R.8.

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 in Gazette 28 February 1992 pp.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 in Gazette 28 February 1992 p.997.]

Order 53

Sales of land by the Court

1. Interpretation

Cf. E. O.31, R.1.

In this Order “**land**” includes any interest in, or right over, land.

2. Power to order sale of land

Cf. W.A. O.L, R.1.

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

Cf. W.A. O.L, R.2. Cf. E. O.31, R.2.

- (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

Cf. E. O.31, R.2.

- (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 paragraph (1) which is made subsequent to the order for sale may be made by summons.

5. Certificate of sale

Cf. W.A. O.L, R.7. Cf. E. O.31, R.3.

- (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.

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- (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

Cf. E. O.31, R.4.

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

Cf. W.A. O.L, R.9. Cf. E. O.31, R.5.

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;
- (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.

8. Objection to counsel's opinion

Cf. W.A. O.L, R.10. Cf. E. O.31, R.6.

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 Order

Cf. E. O.8, R.1.

This Order applies to all motions, subject however, to any special provisions contained in these Rules or made by or under any Act.

2. Application by motion

Cf. W.A. O.LI, R.1.

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

Cf. W.A. O.LI, R.3. Cf. E. O.8, R.2.

- (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. Length of notice of motion

Cf. W.A. O.LI, R.5. Cf. E. O.8, R.2(2).

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

Cf. W.A. O.LI, R.9. Cf. E. 0.8, R.4.

- (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.

Cf. W.A. O.LI, RR.6, 7.

- (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 in Gazette 9 November 1973 p.4164.]

Order 55

Committal and attachment

1. Interpretation

In this Order —

“**Contemnor**” means a person guilty or alleged to be guilty of contempt of court.

2. Committal for contempt of court

Cf. E. O.52, R.1.

- (1) Subject to the Act the power of the Court or Full Court to punish for contempt of court may be exercised by an order of committal.
- (2) Subject to paragraph (3) an order of committal may be made only by the Full Court.
- (3) Where contempt of court is committed in the face of the Court or in the hearing of the Court, or consists of disobedience to a judgment or order of the Court or a breach of an undertaking to the Court, an order of committal may be made by a single Judge.

3. Contempt in the face of the Court

Cf. H.Ct. O.56, R.1.

- (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;
 - (b) require him to make his defence to the charge;
 - (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

Cf. H.Ct. O.56, R.2. Cf. S.A. O.44, R.5.

- (1) In a case to which the last preceding Rule does not apply, and subject to paragraph (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.

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5. Form of notice and service

Cf. H.Ct. O.56, RR.3, 4, 5.

- (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 Queen 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.

6. Arrest

Cf. H.Ct. O.56, R.6.

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. Punishment

Ib. RR.9, 10.

- (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. Power to suspend execution of committal order

Cf. E. O.52, R.7.

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

Cf. H.Ct. O.56, R.11. Cf. E. O.52, R.8.

- (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 in Gazette 14 December 1979 p.3870.]

10. Saving for other powers

Cf E. O.52, R.9.

- (1) Nothing in the foregoing provisions of this Order 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.

11. Court may make peremptory order in first instance

Cf. H.Ct. O.45, R.15.

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 in Gazette 9 November 1973 p.4164.]

12. Application of Rules to attachment

Cf. H.Ct. O.45, R.16.

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

Mandamus, Certiorari, Prohibition, *Quo Warranto*

1 — General

1. Application ex parte

Cf. H.Ct. O.55, RR.1, 8. Cf. Vict. O.53, RR.1, 4.

(1) An application for —

- (a) a writ of Mandamus, Certiorari or Prohibition, or for leave to exhibit an information of *Quo Warranto*; or
- (b) relief of like nature to Mandamus or *Quo Warranto*,

may be made ex parte to the Court, and must be supported by affidavit.

(2) The motion for an order to show cause and all subsequent proceedings shall be entitled —

“

In the matter of an application for (description of the writ or order sought, e.g., a writ of Prohibition) against (name of every person or authority against whom the relief is sought) EX PARTE (name of the applicant) applicant

”.

- (3) (a) Where a writ of Mandamus, Certiorari or Prohibition is sought against a judicial or public authority or officer, the authority or officer shall be described by his or their name, and the name of his or their office.
- (b) In all other cases a party respondent may be described in the title by his name or the name of his office or both, or, in the case of a magistrate or justice in a court of summary jurisdiction, as the magistrate or justice at the place where the court is held.

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- (4) The applicant shall in all cases of applications under this Rule be called “**the applicant**”.
- (5) Subject to paragraph (6) the application shall, in the first instance, be for an order calling upon the parties interested in resisting the application to show cause why the writ should not be issued, or the information filed, or the relief of like nature to Mandamus or *Quo Warranto* given.
- (6) Where it appears necessary for the advancement of justice, the Court may in its discretion, grant an order absolute in the first instance for a writ of Mandamus, Certiorari, or Prohibition, or for leave to exhibit an information of *Quo Warranto*.

[Rule 1 amended in Gazette 9 November 1973 p.4164.]

2. Judge may direct application in Court or to Full Court

Cf. H.Ct. O.55, R.2.

When application to show cause is made to a Judge in chambers or otherwise he may, if he thinks fit, direct that the application be made by notice of motion to a Judge sitting in Court, or to the Full Court, and may adjourn the application so that notice of the application may be given.

3. Order returnable before Full Court except in special cases

Cf. H.Ct. O.55, R.4.

An order to show cause shall be to show cause before the Full Court, unless the matter appears to be one of urgency, in which case the Court may make the order returnable before the Court in Court or chambers.

[Rule 3 amended in Gazette 9 November 1973 p.4164.]

4. Service of order to show cause or notice of motion

Cf. H.Ct. O.55, R.5.

- (1) The order to show cause, or notice of motion must be served on such persons and in such manner as the Court directs, and unless the Court otherwise directs, there must be at least 7 clear days between service of the order to show cause or the notice, and the date named therein for the hearing of the application.
- (2) Where the application relates to any proceedings in or before a court, and the object is either to compel the court or an officer of the court to do an act in relation to the proceedings or to quash the proceedings or any order made therein, the order to show cause or notice of motion must be served on the clerk or registrar of the court, the other parties to the proceedings, and where an objection to the conduct of the judge or magistrate or justices constituting the court is to be made, on the judge, magistrate or justices.
- (3) An affidavit of service must be filed before the order to show cause or notice of motion is placed in the list for hearing, and if any person who ought to be served under this Rule has not been served, the affidavit must state that fact and the reason why service has not been effected.
- (4) If on the application for the order absolute or the hearing of the motion, the Court is of opinion that any person who ought to have had notice of the application has not been served, whether or not he is a person who ought to have been served under or pursuant to the foregoing provisions of this Rule, the Court may direct service on that person, and adjourn the hearing in the meantime on such terms, if any, as it or he may direct.

[Rule 4 amended in Gazette 9 November 1973 p.4164.]

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5. Terms, stay of proceedings

Cf. H.Ct. O.55, RR.9, 10.

- (1) The Court may grant the order to show cause upon such terms as to costs, and as to giving security, or otherwise, as it or he thinks fit.
- (2) An order nisi for Certiorari or Prohibition, shall, if the Court so directs, operate as a stay of the proceedings in question until the determination of the application, or until the Court otherwise orders.

[Rule 5 amended in Gazette 9 November 1973 p.4164.]

6. Applicant limited to grounds etc. in order nisi

Cf. H.Ct. O.55, R.11.

- (1) The grounds of the application and the relief sought must be set out in the order nisi or notice of motion, if any, and if the applicant intends to ask for any amendment at the hearing he must give notice of his 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 shall not be relied on or relief sought on the hearing other than a ground set out or relief sought in the order nisi or notice of motion.

[Rule 6 amended in Gazette 9 November 1973 p.4164.]

7. Right to be heard in opposition

Ib. R.12.

- (1) On the hearing of the application the Court shall hear any person who desires to oppose it, and appears to the Court to be a proper person to be heard, notwithstanding that he has not been served with the order nisi or notice of motion.

- (2) A person who is served with the order nisi or notice of motion or who is heard under this Rule, may, in the discretion of the Court, be ordered to pay costs.

[Rule 7 amended in Gazette 9 November 1973 p.4164.]

8. Additional affidavits, determination of issue, etc.

Ib. R.13.

- (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) Where the applicant intends to ask to be allowed to use further affidavits, he must give reasonable notice of his intention to every other party.
- (3) When 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 8 amended in Gazette 9 November 1973 p.4164;
2 April 1976 p.1041.]*

9. Order absolute, costs

Cf. Vic. O.53, RR.5, 6.

- (1) An order absolute must be served.
- (2) When an order nisi is made absolute the Court may dispose of the costs of the proceedings either by the final judgment or by a separate order.

[Rule 9 amended in Gazette 9 November 1973 p.4164.]

10. Issue and filing of writs

Ib. R.16.

- (1) A writ issued in proceedings to which this Order relates shall be issued out of the Central Office and must be prepared by the

solicitor or party seeking to issue it, and shall, before being sealed, be indorsed with the name and address of that solicitor or party, and if issued out by the solicitor as agent, with the name and address of the principal also.

- (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 in the Central Office together with the return thereto and a copy of any order made thereon.

2 — Certiorari

11. Time for application

Cf. H.Ct. O.55, R.17. Cf. E. O.53, R.2(2).

- (1) An order nisi for a writ of Certiorari to remove a judgment, order, conviction or other proceeding of an inferior court or tribunal, or of a magistrate or justices, for the purpose of its being quashed, shall not be granted unless the application for the order is made within 6 months after the date of the judgment, order, conviction or other proceeding, or within such other period as may be prescribed by any enactment, or except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court to which the application is made.
- (2) Where the judgment, order, conviction or other proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Court may adjourn the application for the order nisi until the appeal is determined or the time for appealing has expired.

[Rule 11 amended in Gazette 9 November 1973 p.4165.]

12. Copy of warrant, order etc. to be produced

An order nisi for a writ of Certiorari to remove any proceedings for the purpose of their being quashed, shall not be granted unless a copy of the warrant, order, conviction, inquisition or

record, verified by affidavit has been filed, or the failure of the applicant to do so is accounted for to the satisfaction of the Court hearing the application.

[Rule 12 amended in Gazette 9 November 1973 p.4165.]

13. Order to quash in the first instance

Cf. Vic. O.53, R.11.

Where on the return of any order nisi the Court directs a writ of Certiorari to issue, or where an order absolute for a writ of Certiorari is granted in the first instance, the Court may by the same order, direct that the judgment, order, conviction or decision of the inferior court or tribunal shall be quashed on the return without further order, and in that case the judgment, order, conviction, or decision is quashed upon the return without further order.

14. Forms

A writ of Certiorari must be in Form No. 67 or Form No. 68, with such variations as the circumstances may require.

3 — Mandamus

15. Prosecutor to show interest

Cf. H.Ct. O.55, R.18.

- (1) An order nisi for 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 paragraph (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.

16. Form of writ

Cf. H.Ct. O.55, R.19.

- (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 in Gazette 9 November 1973 p.4165.]

17. Time for return of writ

Ib. R.20.

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 in Gazette 9 November 1973 p.4165.]

18. Service

Ib. R.21.

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.

[Rule 18 amended in Gazette 9 November 1973 p.4165.]

19. Service on corporate body, or justices

Cf. Vic. O.53, R.18. Cf. H.Ct. O.55, R.22.

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 in Gazette 9 November 1973 p.4165.]

20. Return and service

Cf. H.Ct. O.55, RR.23, 24. Cf. Vic. O.53, RR.19, 20.

- (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 in the Central Office, 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.

21. Pleading to return

Cf. H.Ct. O.55, R.25.

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

Ib. R.26. Cf. W.A. O.LII, R.10.

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

Cf. H.Ct. O.55, R.27.

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 where peremptory writ awarded in first instance, or on obedience

Ib. R.28.

- (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 in Gazette 9 November 1973 p.4165.]

25. Proceedings in nature of interpleader

Cf. H.Ct. O.55, R.29.

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 order nisi or 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 in Gazette 9 November 1973 p.4165.]

26. Proceedings not to abate

Ib. R.29(3).

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 to whom the notice of motion, order nisi or 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.

27. Time

Ib. R.30.

An application for a writ of Mandamus, or an order in the nature of Mandamus, to a judicial tribunal to hear and determine a matter must be made within 2 months after the date of the refusal to hear, or within such further time as is, under special circumstances, allowed by the Court.

[Rule 27 amended in Gazette 9 November 1973 p.4165.]

28. Mandamus by order

Ib. R.31.

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

Ib. R.32. Cf. W.A. O.LII, R.12.

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 in Gazette 9 November 1973 p.4165.]

4 — Prohibition

30. Pleadings in Prohibition

Cf. H.Ct. O.55, R.34.

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 in Gazette 9 November 1973 p.4165.]

31. Proceedings on judgment

Ib. R.35.

If judgment is given for the applicant, the judgment shall include a direction that a writ of Prohibition shall issue.

32. Writ of *Procedendo*

Ib. R.36.

- (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 in Gazette 9 November 1973 p.4165.]

33. Prohibition by order

Ib. R.37.

- (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.

5 — *Quo Warranto*

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 in Gazette 9 November 1973 p.4165.]

35. Signature and service of information

Cf. H.Ct. O.55, R.49.

- (1) The information shall be in the name of the Attorney General or the applicant, as the case may be, on behalf of Her Majesty, and shall be signed by the Attorney General or the applicant.
- (2) A copy of the information must be served upon the defendant, or, if at the return of the order nisi he appeared by solicitor, then upon his solicitor.

Order 57

Habeas corpus

1. Application for writ of *habeas corpus*

Cf. E. O.54, R.1. Cf. S.A. O.60, RR.1, 2.

- (1) An application for a writ of *habeas corpus ad subjiciendum* may be made in the first instance to the Full Court, or 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 paragraph (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 paragraph (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 in Gazette 9 November 1990 p.5526.]

2. Power of Court when *ex parte* application made

Cf. E. O.54, R.2. Cf. S.A. O.60, RR.3, 4.

- (1) The Court or Judge to whom an application under Rule 1 is made *ex parte* may —
 - (a) make an order forthwith for the writ to issue;
 - (aa) refuse to make an order for the issue of a writ;

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- (b) where the application is made to a Judge otherwise than in Court, direct that a summons for the writ be issued or that an application be made by originating motion to the Full Court or to a Judge in Court;
 - (c) where the application is made to a Judge in Court, adjourn the application so that notice thereof may be given, or direct that application be made by originating motion to the Full Court; or
 - (d) where the application is made to the Full Court, adjourn the application so that notice thereof may be given.
- (2) The summons or 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 summons or notice and the date named therein for the hearing of the application.

[Rule 2 amended in Gazette 9 November 1990 p.5526.]

3. Copies of affidavits to be supplied

Cf. E. O.54, R.3.

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. Power to order release of person restrained

Cf. E. O.54, R.4.

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 in Gazette 9 November 1990 p.5526.]

5. Signed copy of writ to be filed

Cf. Vic. O.53, R.41.

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.

6. Directions as to return of writ

Cf. E. O.54, R.5.

Where a writ of habeas corpus is ordered to issue, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the writ is returnable.

7. Service of writ and notice

Cf. E. O.54, R.6.

- (1) Subject to paragraphs (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) Together with the writ there must be served a notice (in Form 72) stating the Court or Judge before whom and the date on which the person restrained is to be brought and that in

default of obedience proceedings for committal of the party disobeying will be taken.

8. Return to writ of *habeas corpus*

Cf. H.Ct. O.55, R.42. Cf. E. O.54, R.7.

- (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

Cf. E. O.54, R.8.

- (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

1 — Introductory

1. Proceedings to be heard in chambers 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.

2 — Administration and Trusts

2. Originating summons for relief without administration

Cf. W.A. O.LV, R.4.

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;

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- (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. Summons for administration

Ib. R.5.

Any of the persons named in the last preceding Rule 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.

4. Service

Ib. R.6.

The persons to be served with the summons under the last 2 preceding Rules 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 —
 - (a) 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;

- (b) for the determination of any question, under Rule 2(b), any member or alleged member of the class;
- (c) for the determination of any question, under Rule 2(c), any person interested in taking such accounts;
- (d) for the determination of any question, under Rule 2(d), any person interested in such money;
- (e) for relief under Rule 3(a), the residuary beneficiaries, or next of kin, or some of them;
- (f) for relief under Rule 3(b), the cestuis que trustent, or some of them;
- (g) 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.

5. Decision without judgment for administration

Ib. R.13.

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 or execution of trusts

Ib. R.14.

Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust,

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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.

ib. R.16.

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

Cf. W.A. O.XLIX, R.11. Cf. E. O.85, R.6.

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.

[9 and heading. Repealed in Gazette 10 January 1975 p.51]

4 — Declaration on Originating Summons

10. Construction of written instruments

W.A. O.LIV, R.I.

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 statutes, etc.

Ib. R.1A.

- (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. Discretion of Court

Ib. R.4.

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. Application by vendor or purchaser of land

Sale of Land Act 1970, s.20.

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.

5 — General

14. Form and issue of originating summons

Cf. W.A. O.LIII, RR.4, 5A. Cf. H.Ct. O.52, R.7. Cf. E. O.7, RR.2, 5.

- (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 his solicitor.
- (2) The party taking out an originating summons shall be described as a plaintiff, and the other parties shall be described as defendants.
- (3) Issue of an originating summons takes place upon its being sealed in the Central Office.
- (4) The person presenting the summons for sealing must file a copy thereof at the time the summons is issued.
- (5) An originating summons shall be entitled in the matter of the Act (if any) and the section thereof, 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.

15. Duration and renewal: Concurrent summons

Cf. E. O.7, RR.4, 6.

Order 7 applies in relation to an originating summons as it applies in relation to a writ.

16. Time for appearance

Cf. W.A. O.LIII, R.6.

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 in Gazette 3 October 1975 p.3769.]

17. Entry of appearance

Cf. H.Ct. O.52, R.8.

- (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

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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. Where appearance not required

Cf. S.A. O.54, R.7.

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;
- (b) under the *Commercial Arbitration Act 1985*;
- (c) under Order 17 for interpleader relief;
- (d) for an extension of time or for leave to institute an appeal or other proceeding;
- (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 in Gazette 13 October 1978 p.3701; 20 June 1986 p.2040.]

18A. Time for service where appearance is 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 in Gazette 3 October 1975 p.3770.]

19. Fixing time for hearing

- (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 paragraphs, obtain an appointment for the attendance of the parties for the hearing of the summons and a day and time shall be fixed by a notice in Form No. 76 which shall be sealed in the Central Office.
- (2) 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 every affidavit in support thereof, not being an affidavit in reply to an affidavit filed by a defendant.
- (3) A plaintiff shall not obtain a date of hearing under this Rule unless he is ready to proceed and has filed a certificate of readiness.
- (4) The certificate referred to in paragraph (3) —
 - (a) shall be in such form and contain such information as the Chief Justice shall direct from time to time; and
 - (b) shall be signed personally by the plaintiff's solicitor, or by the plaintiff where he is not represented by a solicitor.
- (5) A copy of the certificate shall be served with the notice of appointment.
- (6) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant who has entered an appearance may, with the leave of the Court, and on such terms as the Court may order, obtain an appointment for the hearing of the originating summons.

[Rule 19 inserted in Gazette 3 October 1975 pp.3770.]

20. Notice of hearing

Ib. R.3(1)(2).

At least 10 days before the day fixed under Rule 19 for the hearing of an originating summons, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has entered an appearance, and if the first-mentioned party is a defendant, on the plaintiff.

[Rule 20 inserted in Gazette 3 October 1975 p.3770.]

21. Evidence

Cf. O.36, R.2, O.58, R.27.

Unless the Court otherwise orders, evidence at the hearing of an originating summons shall be adduced by affidavit.

[Rule 21 inserted in Gazette 3 October 1975 p.3770.]

22. Proceeding where a party fails to attend

Cf. W.A. O.LIII, RR.10, 11. Cf. E. O.32, R.5.

- (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

Cf. E. O.32, R.6.

The Court may set aside any order which has been made ex parte.

24. Costs thrown away by non-attendance of party

Cf. W.A. O.LIII, R.12.

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 in Gazette 9 November 1973 p.4165.]

25. Further attendance where summons not fully disposed of

Ib. R.13.

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. What matters may be included in the same summons

Ib. R.14.

In every cause or matter where any party thereto makes any application at chambers, either by way of originating summons,

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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 in Gazette 9 November 1973 p.4165.]

27. Directions, etc.

Cf. E. O.28, R.4(2)(3).

- (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. Adjournment of summons

Cf. E. O.28, R.5.

- (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 paragraph (2) need not be given to a party who is in default as to appearance.

[Rule 28 amended in Gazette 3 October 1975 p.3771.]

29. Further provisions as to powers and procedure

Cf. W.A. O.LX, RR.8-12. Cf. S.A. O.54, R.9.

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. Directions regarding applications under *Transfer of Land Act 1893* s. 129C

Cf. Vic. O.54, R.19.

- (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) Where the powers of the Court under section 129C of the *Transfer of Land Act 1893* are exercised by a Registrar, references in this Rule to the Master shall include references to the Registrar.

[Rule 30 inserted in Gazette 24 June 1977 pp.1914-15; amended in Gazette 30 July 1982 p.2946; 30 November 1984 p.3951.]

Order 59

Applications and proceedings in chambers

1. Business at chambers

Cf. W.A. O.LV, R.3. Cf. H.Ct. O.52, R.1. Cf. Vic. O.54, R.1.

The business to be disposed of in chambers shall consist of —

- (1) 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;
- (2) subject to Rule 2, civil proceedings commenced by originating summons;
- (3) applications which by these Rules or any Act may be heard in chambers;
- (3a) applications to Case Management Registrars in relation to cases to which Order 29A applies;
- (4) applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter;
- (5) applications for the investment or change of investment of any funds in court;
- (6) 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;
- (7) 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;
- (8) applications on behalf of an infant where the infant is a ward of Court, or where the administration of the estate

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of an infant, or the maintenance of an infant, is under the direction of the Court;

- (9) applications for the settlement of any property of any infant on marriage;
- (10) applications as to the guardianship, custody, maintenance or advancement of infants;
- (11) applications connected with the management of property;
- (12) 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;
- (13) applications for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents, and papers;
- (14) 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;
- (15) such other matters as the Judge may think fit to dispose of at chambers.

[Rule 1 amended in Gazette 28 October 1996 p.5699.]

2. Hearing of proceedings in open court

Cf. E. O.28, R.8. Cf. H.Ct. O.52, RR.2, 3.

- (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. Form of applications in chambers

- (1) An application in chambers, other than an application made by originating summons, shall be made —
- (a) if it is ex parte, by motion;
 - (b) in any other case by summons,
- unless these Rules require or authorise it to be made otherwise.
- (2) An application to a Case Management Registrar in chambers in relation to a case to which Order 29A applies shall be made in accordance with Order 29A Rule 12.
- (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 in Gazette 28 October 1996 pp.5699-700.]

4. Form and issue of summons

Cf. W.A. O.LIII, RR.3, 15, 16.

- (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 in the Central Office.
- (3) At the time the summons is issued the person presenting it for sealing must file a copy of the summons.
- (4) A summons shall not be amended after issue except with the leave of the Court.

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5. Service of summons

Cf. W.A. O.LIII, R.9. Cf. E. O.32, R.3.

- (1) Subject to paragraph (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 in Gazette 3 October 1975 p.3771.]

6. Obtaining assistance of experts

Cf. W.A. O.LV, R.21. Cf. E. O.32, R.16.

- (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 in Gazette 28 October 1996 p.5700.]

8. Summons operating as stay of proceedings

Cf. H.Ct. O.52, R.10(3).

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 paragraph (1) in a case of urgency or for other good reason.

[Rule 9 inserted in Gazette 28 October 1996 p.5700.]

10. Form of order

Ib. R.25.

- (1) Subject to paragraph (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 in Gazette 10 January 1975 p.51.]

Order 60

Jurisdiction of the Masters

[Heading amended in Gazette 30 November 1984 p.3952.]

1. Powers of the Masters

Cf. W.A. O.LIII, R.17.

- (1) Subject to this Order, the Masters may do such things, transact such business and exercise such authority and jurisdiction as a Judge sitting in chambers may do, transact or exercise —
 - (a) under the *Supreme Court Act 1935* or under any custom or rule or practice of the Court, except in relation to —
 - (i) proceedings on the Crown side of the Court, or criminal proceedings or proceedings relating to the liberty of the subject;
 - (ii) subject to paragraph (1A), injunctions (including mandatory injunctions) and orders for the appointment of receivers;
 - (iii) reviewing taxation of costs;
 - (iv) proceedings in which an originating summons raises for the determination of the Court a question as to the construction of a statute or document or a question of law or a question arising out of or connected with a contract between a vendor or purchaser of land or an interest in land; or
 - (v) such business, authority, and jurisdiction as may by these Rules be expressly directed to be transacted or exercised by a Judge in person;
 - (b) under the *Commercial Arbitration Act 1985*;
 - (c) under sections 13, 17E⁸, 24 or 53 of the *Bills of Sale Act 1899*;

- (ca) under section 17(1) of the *Business Franchise Act 1975*⁹ to extend time;
- (d) under section 6 of the *Crown Suits Act 1947*;
- (e) under section 58(1) of the *Death Duty Assessment Act 1973*¹⁰ to extend time;
- (f) under sections 58, 73, 76 or 79 of the *District Court of Western Australia Act 1969*;
- (fa) under the *Escheat (Procedure) Act 1940*, where the application is not opposed;
- (fb) under section 16(1)(b) of the *Evidence Act 1906*, when hearing a trial in open court;
- (g) under sections 51, 52, 93, 94, 95, 110 or 111 of the *Evidence Act 1906*;
- (ga) under sections 7V and 7W of the *Evidence Act 1905* of the Commonwealth;
- (h) under sections 116 and 117 of the *Evidence Act 1906*;
- (ha) under section 6(6) or under section 7 or section 9A of the *Fatal Accidents Act 1959*;
- (i) under sections 7, 9 or 10 of the *Foreign Judgments Act 1963*;
- [(j) *deleted*]
- (k) under the *Inheritance (Family and Dependents Provision) Act 1972*;
- (l) under sections 206B or 206D of the *Justices Act 1902*;
- (la) under section 4(3) of the *Law Reform (Miscellaneous Provisions) Act 1941* to extend time;
- (m) under the *Legal Representation of Infants Act 1977*;
- (n) under section 47A(3) of the *Limitation Act 1935*;
- (o) under sections 34, 87 or 88, section 107(3) and (7) or section 142 of the *Local Courts Act 1904*;
- (p) under section 660 of the *Local Government Act 1960*¹¹;

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- (q) under section 28 of *The Partnership Act 1895* and, where the application is not opposed under section 46 or 50 of that Act;
 - (r) under section 22 of the *Prisons Act 1981*;
 - (s) under Part XIV of the *Property Law Act 1969* where the application is not opposed;
 - (t) under section 49 of the *Public Trustee Act 1941*;
 - [(u) *deleted*]
 - (v) under section 33(1) of the *Stamp Act 1921* to extend time;
 - (w) under section 129C(4) of the *Transfer of Land Act 1893* and, where the application is not opposed, under the other provisions of that section;
 - (x) under section 47U(1) of the *Transport Co-ordination Act 1966* to extend time;
 - (y) under section 98 or 99 of the *Trustees Act 1962*; and
 - (z) under section 84ZW of the *Workers' Compensation and Rehabilitation Act 1981*.
- (1A) A Master shall have power to grant an injunction (including a mandatory injunction) and make an order for the appointment of a receiver —
- (a) in the terms agreed upon by the parties to the proceedings;
 - (b) where the injunction or order is ancillary or incidental to —
 - (i) equitable execution or a charging order;
 - (ii) a judgment or order for specific performance of an agreement;
 - (iii) a judgment or order under section 28, 46 or 50 of *The Partnership Act 1895*; or

(iv) an order under part XIV of the *Property Law Act 1969*.

(1B) A Master shall have power to hear and determine a cause, matter, question, issue, application or other proceeding, not otherwise within the Master's jurisdiction —

- (a) with the consent of the parties to the proceeding; or
- (b) where the order is made in the terms agreed upon between the parties to the proceeding,

but the failure of a party to seek or give consent shall not prejudice his right to costs on a summons before a Judge.

(1BA) A Master shall have power to hear and determine any cause, matter, question, issue, application, or other proceeding including any non-jury action referred by the Chief Justice or the Judge in charge of the civil list, without the consent of the parties.

(1C) A Master shall have power to hear and determine all applications under Parts 2, 3 and 6 of the *Service and Execution of Process Act 1992* of the Commonwealth.

(1D) A Master shall have power to hear and determine all applications under Parts 2 and 4 of the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth.

(2) On the taking of any accounts or the making of any inquiries, any party shall have the right to have an adjournment from the Master to a Judge in person without any further summons for that purpose.

[Rule 1 amended in Gazette 24 June 1977 p.1955; 13 October 1978 pp.3701-2; 14 December 1979 p.3870; 1 August 1980 p.2558; 2 July 1982 p.2316; 30 November 1984 pp.3951, 3953 and 3954; 20 June 1986 p.2040; 8 February 1991 pp.584 and 587; 1 March 1994 p.787; 24 January 1995 p.273; 9 August 1996 p.3949; 16 July 1999 p.3194.]

r. 2

2. Master or Registrar may take accounts and make inquiries

Cf. W.A. O.LV, R.17(2). See also ss. 50 and 51 Supreme Court Act 1935; O.67, R.17, infra.

Without prejudice to the power, authority and jurisdiction conferred on the Masters by Rule 1, the Court may, in any proceedings pending before it, order that an account be taken or that an inquiry be made by a Master, or by the Registrar or other proper officer; and the Court shall give such aid and directions in every such account or inquiry as it may think fit.

[Rule 2 inserted in Gazette 2 July 1982 p.2316; amended in Gazette 30 November 1984 p.3952.]

2A. When matters within Master's jurisdiction may be brought before a Judge

A matter or proceeding that is authorised by or under these Rules to be heard and determined by a Master shall not be brought before a Judge except —

- (a) on a reference by a Master under Rule 3; or
- (b) by leave of a Judge or a Master.

[Rule 2A inserted in Gazette 2 July 1982 p.2317; amended in Gazette 30 November 1984 p.3951.]

3. Reference by Master to a Judge or the Full Court

Cf. W.A. O.LIII, R.18.

- (1) A Master may refer any application or matter to a single Judge or to the Full Court, and the Full Court or the Judge may either dispose of the application or matter or refer it back to the Master with such directions as it or he may think fit.
- (2) Pending the final disposal of the application or matter the Master may make such interim order as he shall think just.

[Rule 3 amended in Gazette 30 November 1984 p.3951.]

[4. *Repealed in Gazette 2 July 1982 p.2317.*]

5. Power to issue advertisements and summon witnesses

Cf. W.A. O.LV, R.18. Cf. E. O.32, R.15.

A Master shall, for the purpose of any proceedings directed to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits and acknowledgments, and to examine parties and witnesses either upon interrogatories or viva voce.

[Rule 5 amended in Gazette 30 November 1984 p.3952.]

6. Duty of persons summoned to attend

Cf. W.A. O.LV, R.19.

Parties and witnesses summoned to attend before a Master shall be bound to attend in pursuance of the summons, and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the Court, or in case of default in attendance, in pursuance of any order of the Court or of any writ of subpoena *ad testificandum*, and all persons swearing or affirming before a Master shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming before him as if the matter sworn or affirmed had been sworn or affirmed before any other person by law authorised to administer oaths, to take affidavits, and to receive affirmations.

[Rule 6 amended in Gazette 30 November 1984 p.3592.]

7. Form — Master's Summons

Ib. R.22.

The Summons by the Master requiring the attendance of parties, witnesses, or others, shall be in Form No. 79.

r. 8

8. Interest and apportionment

lb. R.20.

The Court may direct any computation of interest, or the apportionment of any fund, to be certified by a Registrar and to be acted upon by the Accountant or any other person without further order.

[Rule 8 amended in Gazette 2 July 1982 p.2317.]

[9, 10. Repealed in Gazette 2 July 1982 p.2317.]

Order 60A

[Heading inserted in Gazette 28 October 1996 p.5701.]

Jurisdiction of Registrars and appeals from Registrars' decisions

[Heading inserted in Gazette 28 October 1996 p.5701.]

1. Powers of Registrars

A Registrar may exercise these powers of the Court:

- (aa) under Order 36A, the powers of the Court in relation to expert evidence;
- (a) under Order 42 Rule 8, to obtain the consent of a defendant in person;
- (b) under Order 46 Rule 3A, to grant leave to issue a writ of possession;
- (c) under Order 62A Rule 4, to grant leave in a mortgage action begun by a writ to enter judgment in default of appearance or in default of defence;
- (d) under section 129C(4) of the *Transfer of Land Act 1893* and, where the application is not opposed, under the other provisions of that section.

[Rule 1 inserted in Gazette 28 October 1996 p.5701; amended in Gazette 16 July 1999 p.3194.]

r. 2

2. Powers of Case Management Registrars

- (1) In relation to a case to which Order 29A applies, a Case Management Registrar may exercise the powers of the Court under these Rules:

Order 2	Order 28
Order 3	Order 30 Rules 2 and 5
Order 7	Order 33 Rule 2
Order 8	Order 37
Order 18	Order 41
Order 19	Order 52 Rules 2 to 5
Order 20	Order 58 Rules 22 to 27
Order 21	and 29
Order 22	Order 66
Order 23	Order 73
Order 26	Order 75 Rules 4, 5, 6 and 7
Order 26A	Order 83
Order 27	

- (2) The powers in paragraph (1) are in addition to any other powers conferred on Case Management Registrars.
- (3) A Case Management Registrar cannot order the attachment or committal of any person.
- (4) An interlocutory order made by a Case Management Registrar is not enforceable by a writ of attachment or order of committal.

[Rule 2 inserted in Gazette 28 October 1996 pp.5701-02; amended in Gazette 16 July 1999 p.3194.]

2A. Applications within Registrar's jurisdiction to be made to Registrar

An application in relation to a power of the Court that is exercisable by a Registrar or Case Management Registrar shall be made to a Registrar or Case Management Registrar, as the case requires, unless —

- (a) the application or matter has been referred under Rule 3 to a Master or to the Court; or

- (b) a Judge or Registrar has granted leave for the application to be made to a Master or to a Judge.

[Rule 2A inserted in Gazette 16 July 1999 p.3194.]

3. Registrar may refer matters to a higher judicial officer

- (1) A Case Management Registrar may refer a matter arising in a hearing under Order 29 Rule 4 to a Master who may either dispose of the application or matter or refer it back to the Registrar with such directions as the Master thinks fit.
- (2) A Case Management Registrar may —
 - (a) with or without hearing it, refer an application made under Order 29A Rule 12; or
 - (b) refer a matter arising in a case management conference under Order 29A,to a Master who may either dispose of the application or matter or refer it back to the Registrar with such directions as the Master thinks fit.
- (3) A Registrar may refer any other application or matter to the Court and the Court may either dispose of the application or matter or refer it back to the Registrar with such directions as it thinks fit.
- (4) When a Registrar refers an application or a matter under —
 - (a) paragraph (3);
 - (b) Order 43 Rule 11(2);
 - (c) Order 63 Rule 2(4); or
 - (d) Order 66 Rule 45 or 52,

the referral shall be by memorandum containing short background notes, the reason or reasons for the referral and the Registrar's preliminary views on the issue or issues upon which the referral is sought.

[Rule 3 inserted in Gazette 28 October 1996 p.5702.]

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4. Appeals from Registrars

- (1) Subject to paragraph (6), a person affected by an order or decision of a Registrar may appeal from it.
- (2) The appeal is to be made to a Master except an appeal from a direction made by an Appeals Registrar under Order 65B which is to be made to Judge.
- (3) The decision of a Master on an appeal from a procedural decision of a Registrar is final.
- (4) The decision of a Judge on an appeal from a decision of a Registrar is final.
- (5) A procedural decision means —
 - (a) a case management direction made under Order 29A;
 - (b) a decision as to the time for compliance with an interlocutory order; or
 - (c) an enforcement order made under Order 29A other than a self-executing order for judgment, striking out pleadings, or otherwise.
- (6) 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;
 - (b) made or given in proceedings to which Order 61 applies; or
 - (c) when acting as a Taxing Officer.

[Rule 4 inserted in Gazette 28 October 1996 p.5703.]

5. Appeal procedure

- (1) An appeal from a Registrar shall be commenced within 3 days after the date of the decision concerned by filing a notice of appeal.

- (1a) The appeal shall be commenced and proceed on the file in which the action was commenced.
- (2) The notice of appeal shall state —
 - (a) the order or direction appealed against;
 - (b) briefly, but specifically, the grounds of the appeal; and
 - (c) the orders or directions to be sought at the appeal.
- (3) All parties shall file written submissions within 3 days after the filing of the notice of appeal.
- (4) No appeal books are required for the appeal.
- (5) The appeal shall be entered for hearing within 7 days after it is commenced and if not so entered shall be taken to have been discontinued.
- (6) Within 24 hours after filing a document under this Rule a copy of it shall be served on the other parties.

*[Rule 5 inserted in Gazette 28 October 1996 pp.5703-04;
amended in Gazette 16 July 1999 p.3194.]*

6. Powers of Judge or Master on appeal

- (1) An appeal from a Registrar shall be by way of rehearing.
- (2) The Judge or Master hearing an appeal has the powers and duties of the Full Court on an appeal and may cancel or amend any interlocutory order or case management direction made by the Registrar.

[Rule 6 inserted in Gazette 28 October 1996 p.5704.]

Order 61

Proceedings under judgments and orders

1 — Application of Order

1. Application to proceedings under an order

Cf. E. O.44, R.1.

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 in Gazette 2 July 1982 p.2317.]

2 — Summons to proceed

2. Summons to proceed and directions

Cf. W.A. O.LV, RR.30, 31. Cf. E. O.44, RR.2, 4.

- (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 paragraph (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;

- (b) the evidence to be adduced in support thereof;
- (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.

3. Notice of judgment to be served on certain persons

Cf. W.A. O.XVI, R.28. Cf. E. O.44, R.3.

- (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 paragraph (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.

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- (3) The notice of a judgment or proposed judgment to be served pursuant to paragraph (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.

4. Settling deed if parties differ

Cf. W.A. O.LV, R.32. Cf. E. O.44, R.8.

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

Cf. W.A. O.LV, R.33.

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. Power to bind where service dispensed with

Ib. R.34.

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

Ib. R.35.

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

Ib. R.36.

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.

3 — Attendances

9. Classifying interests of parties

Cf. W.A. O.LV, R.40.

- (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.

Costs of party appearing separately

- (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

Ib. R.41.

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

Ib. R.42.

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

Ib. R.43.

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.

4 — Claims of Creditors and other Claimants

13. Advertisements may be directed

Cf. W.A. O.LV, RR.44, 45. Cf. S.A. O.57, R.12. Cf. E. O.44, R.10.

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. By whom prepared and signed

Cf. W.A. O.LV, RR.46, 47.

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. Form of advertisement

Cf. W.A. O.LV, R.48. Cf. E. O.44, R.10(2).

- (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.

16. Failure to claim within specified time

Cf. W.A. O.LV, R.44. Cf. E. O.44, R.11.

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

Cf. W.A. O.LV, R.53. Cf. E. O.44, R.12.

- (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;
 - (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.

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- (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 paragraphs (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.

18. Adjudication on claims

Cf. W.A. O.LV, R.56. Cf. E. O.44, R.13.

- (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 paragraph (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 produce to the Court 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 paragraph (2) his claim may be disallowed.
- (4) A claimant who files an affidavit in compliance with a notice served on him under paragraph (2) must serve notice of the filing on the party by whom the first-mentioned notice was served.
- (5) Unless he has been served with a notice under paragraph (2)(a) a person claiming to be a creditor need not make an affidavit or attend in support of his claim, except to produce any documents which he is required to produce.
- (6) Unless the Court otherwise directs, a person claiming to be a secured creditor must produce his security to the Master.
- (7) In this Rule references to a claim include references to a part of a claim.

19. Adjournment — further evidence

Cf. W.A. O.LV, R.55. Cf. E. O.44, R.14.

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

Cf. E. O.44, R.15.

- (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 paragraph (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 paragraph (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.

21. Notice of claims allowed or disallowed

Cf. W.A. O.LV, R.57. Cf. E. O.44, R.16.

- (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 in the Central Office.

[Rule 21 amended in Gazette 30 November 1984 p.3954.]

22. Service of notices

Cf. W.A. O.LV, R.62. Cf. E. O.44, R.17.

For the purpose of Order 72 Rule 5 in its application to the service of a notice under this Order on a claimant, the proper address of that claimant shall be the address stated in his claim, or, if a solicitor is acting for him in connection with the claim, the business address of that solicitor.

5 — Interest

23. Interest on debts

Cf. W.A. O.LV, RR.63, 64. Cf. E. O.44, R.18.

- (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

Cf. W.A. O.LV, R.65. Cf. E. O.44, R.19.

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.

6 — Certificates of the Master

25. Master's certificate

Cf. W.A. O.LV, RR.66, 67, 70. Cf. E. O.44, R.21.

- (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

paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

[Rule 25 amended in Gazette 30 November 1984 p.3952.]

26. Settling and filing of Master's certificate

Cf. W.A. O.LV, RR.68, 69, 70. Cf. E. O.44, R.22.

- (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. Parties may take opinion of the Judge

Cf. W.A. O.LV, R.71. Cf. E. O.44, R.20.

- (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 paragraph (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 Full Court, but the Master shall refer to such order or directions in his certificate under Rule 25.

Cf. Vic. O.55, R.69.

- (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.

28. Discharge or variation of Master's certificate

Cf. W.A. O. LV, RR. 72, 73. Cf. E.O. 44, R. 23.

- (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,

apply to the Full Court by motion and in accordance with the provisions of Order 63 for an order discharging or varying the certificate.

- (2) A copy of a motion 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.

[Rule 28 inserted in Gazette 2 July 1982 p.2317; amended in Gazette 30 November 1984 p.3952.]

28A. Discharge or variation of 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 paragraph (4) the Registrar's certificate shall, upon the expiry of the period specified in relation to it in paragraph (1) be binding on the parties to the proceedings unless discharged or varied by order under paragraph (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 in Gazette 2 July 1982 p.2317.]

7 — Further consideration

29. Summons to have matter further considered

Cf. W.A. O.LV, R.74.

- (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

Proceeding under the *Trustees Act 1962*

1. Mode of application

Cf. W.A. O.LVI, R.1.

- (1) Subject to paragraph (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 paragraph (2).

[Rule 1 amended in Gazette 15 June 1973 p.2249.]

2. Title of proceedings

Cf. W.A. O.LVI, RR.2(3), 3.

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 section 99

Cf. W.A. O.LVI, R.2(1). Cf. E. O.92, R.2.

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;

- (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;
- (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) an address where he may be served with any summons or order, or notice of any proceedings relating to the money or securities paid into court.

4. Notice of payment in, etc.

Cf. W.A. O.LVI, R.2(2)(a).

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. and notice thereof

Cf. W.A. O.LVI, R.2(2)(b(c)).

- (1) No summons relating to the money or securities paid into court under the said Act shall be issued unless the applicant has named therein an address for service of any summons, or notice of proceeding or order relating to the moneys or securities or the dividends thereof.
- (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.

Order 62A⁶

[Heading inserted in Gazette 10 January 1975 p.51.]

Mortgage actions

[Heading inserted in Gazette 10 January 1975 p.51.]

1. Application and interpretation

Cf. E. O.88, R.1.

- (1) This Order applies to any proceedings (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being proceedings in which there is a claim for relief of any of the following kinds, namely —
 - (a) payment of moneys secured by the mortgage;
 - (b) sale of the mortgaged property;
 - (c) foreclosure;
 - (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property;
 - (e) redemption;
 - (f) reconveyance of the property or its release from the security; or
 - (g) delivery of possession by the mortgagee.
- (2) In this Order “**mortgage**” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.
- (3) In this Order “**mortgage**” and “**charge**” also include mortgages and charges registered under the provisions of the *Transfer of Land Act 1893*; but nothing in the Order extends or affects the

powers of sale or foreclosure conferred by Division 3 of Part IV of that Act, and proceedings claiming possession of land pursuant to such a mortgage or charge shall be commenced by writ of summons and not otherwise.

- (4) Proceedings to which this Order applies are referred to in this Order as a mortgage action.
- (5) These Rules apply to mortgage actions subject to the following provisions by this Order.

[Rule 1 inserted in Gazette 10 January 1975 pp.51-2.]

2. Claim for possession: non-appearance by a defendant

ib. R. 5.

- (1) Where in a mortgage action begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to enter an appearance the following provisions of this Rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.
- (2) This Rule does not affect Rule 20 or Rule 28(2) of Order 58 in so far as either of those Rules require any document to be served on, or notice given to, a defendant who has entered an appearance in the action.
- (3) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.
- (4) Where the plaintiff claims delivery of possession there must be indorsed on the first sheet of the copy of the affidavit served on the defendant, directly following the information referred to in Order 69 Rule 2(1)(h), a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the

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defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

- (5) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.
- (6) A copy of any affidavit served under paragraph (5) must be indorsed in accordance with paragraph (4).
- (7) Service under paragraph (3) or (5) and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his solicitor.
- (8) A certificate of the kind mentioned in paragraph (7) may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.
- (9) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (3) or (5).
- (10) Where the plaintiff gives notice to the defendant under Order 3, Rule 7 of his intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in paragraphs (7) and (8).

[Rule 2 inserted in Gazette 10 January 1975 pp.52-3; amended in Gazette 5 April 1991 p.1398.]

3. Evidence in support of originating summons for possession or payment

Ib. R.6.

- (1) This Rule applies to a mortgage action begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.
- (2) The affidavit in support of the originating summons by which an action to which this Rule applies is begun must comply with the following provisions of this Rule.
- (3) The affidavit must exhibit the original mortgage or a true copy of it.
- (4) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of —
 - (a) the amount of the advance;
 - (b) the amount of the repayments;
 - (c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit; and
 - (d) the amount remaining due under the mortgage.
- (5) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.
- (6) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

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- (7) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (4).
- (8) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.
[Rule 3 inserted in Gazette 10 January 1975 pp.53-4.]

4. Action by writ: judgment in default

Ib. R.7.

- (1) Notwithstanding anything in Order 13 or Order 22, in a mortgage action begun by writ judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.
- (2) An application for the grant of leave under this Rule must be made by summons and the summons must, notwithstanding anything in Order 72 Rule 8, be served on the defendant.
- (3) Where a summons for leave under this Rule is issued, Rule 2(3) to (10) shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (3) to the notice of appointment, there shall be substituted references to the summons.
- (4) Where a summons for leave under this Rule is issued in an action to which Rule 3 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that Rule.

[Rule 4 inserted in Gazette 10 January 1975 p.54.]

5. Foreclosure in redemption action

Ib. R. 8.

Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage action for redemption to redeem, the

defendant in whose favour the foreclosure has taken place may apply by motion or summons for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

[Rule 5 inserted in Gazette 10 January 1975 p.54.]

Order 63

Appeals to the Full Court, new trials

1. Application of Order to applications for new trial

Cf. E. O.59, R.2. Cf. Vic. O.58, R.1.

Subject to section 59 of the Act this Order (except so much of Rule 2(1) as provides that an appeal shall be by way of rehearing, and except Rule 12(1)) applies, unless the context otherwise requires, to an application to the Full Court for a new trial, or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

2. Notice of appeal

Cf. W.A. O.LVIII, R.1.

- (1) All appeals to the Full Court from the judgment or order of a Judge or a Master in court shall be by way of rehearing, and shall be instituted by notice of motion which must be served and filed as hereinafter provided.
- (2) The appellant may, by notice of motion, appeal from the whole or any part of any judgment or order, and the notice of motion must state whether the whole or part only of such judgment or order is complained of, and in the latter case must specify such part. It must also state briefly, but specifically, the grounds relied upon in support of the appeal, and what judgment the appellant seeks in lieu of that appealed from.
- (3) Without affecting the specific provisions of the foregoing subrules, it is not sufficient to allege that a judgment or order is against the evidence or the weight of evidence or that it is wrong in law; the notice must specify the particulars relied on to demonstrate that it is against the evidence and the weight of evidence and the specific reasons why it is alleged to be wrong in law.

- (4) Where the notice of grounds of appeal does not in the opinion of the Registrar comply with this Rule the Registrar shall before either —
- (a) giving the appellant an appointment to settle the appeal book index; or
 - (b) settling the index,

as the case may be, refer the question to a Judge for his direction, and notify the parties that he has done so.

- (5) A notice of motion may be amended by order of a Judge before the appeal is listed for hearing on such terms (if any) as the Judge thinks fit.

*[Rule 2 amended in Gazette 2 July 1982 p.2317;
30 November 1984 p.3952; 26 August 1994 p.4412;
28 October 1996 p.5704.]*

3. Service. Amendment

Cf. W.A. O.LVIII, R.2.

The notice of motion by way of appeal must be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Full Court may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of motion may be amended at any time as the Full Court may think fit.

4. Time for appealing and mode of initiating appeal

Cf. W.A. O.LVIII, R.3. Cf. E. O.59, R.4.

- (1) A notice of motion by way of appeal must be served and a copy thereof filed within 21 days from the date of the judgment, order or verdict, or within such extended time as the Full Court or a Judge may allow.

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- (2) Where a summons to vary a certificate and the further consideration of an action are heard together, the time for appealing against the order made on the summons to vary the certificate shall be the same as the time for appealing against the order made on further consideration.
- (3) Upon service and filing of the notice of appeal, the appeal is instituted.

[Rule 4 amended in Gazette 15 June 1973 p.2249; 9 November 1973 p.4165; 14 December 1979 p.3870.]

5. Calculation of period

Cf. W.A. O.LVIII, R.4. Cf. W.A. O.XXXVII, R.3.

The period mentioned in Rule 4 shall be calculated —

- (a) from the date when the judgment or order was made;
- (b) in the case of a refusal of an application, from the date of the refusal;
- (c) in the case of an application for a new trial, from the date on which the verdict was found.

[Rule 5 amended in Gazette 15 June 1973 p.2249.]

6. Copy of notice to be filed

Cf. W.A. O.LVIII, R.5.

The appellant must, within the time prescribed by Rule 4 for service and filing of the notice of appeal, file a copy of the notice in the proceedings out of which the appeal arose.

[Rule 6 inserted in Gazette 14 December 1979 p.3870.]

7. Entry for hearing and lodging of appeal books

Ib. R.6.

- (1) Unless the Full Court or a Judge otherwise orders, an appeal must be entered for hearing before the expiration of 12 weeks from the institution of the appeal.

- (2) Unless the Full Court or a Judge otherwise orders, an appeal, not being an application by way of renewal of an ex parte application that has been refused, must be entered for hearing at least 2 months before the day appointed for the commencement of the sittings at which the appeal is to be heard.
- (3) Unless the Full Court or a Judge otherwise orders, an appeal shall not be entered for hearing unless the appellant has lodged at the Central Office 5 copies of the appeal book and such other copies (if any) as the Registrar may require.
- (4) On the day on which an appeal is entered for hearing the appellant shall serve each respondent separately represented with notice of the entry and with 2 copies of the appeal book.
- (5) Where the appellant does not enter the appeal for hearing as prescribed by this Rule, any respondent may apply to the Full Court, by motion upon notice, for an order dismissing the appeal for want of prosecution.

*[Rule 7 amended in Gazette 7 October 1977 p.3602;
2 July 1982 p.2318; 1 March 1994 p.787.]*

8. Appeals in ex parte applications

Cf. W.A. O.LVIII, R.8. Cf. Vic. O.58, R.1B.

Where an ex parte application has been refused by a Judge or a Master, an application for a similar purpose may be made to the Full Court ex parte at the next sittings of the Full Court for hearing civil appeals after such refusal, or within such enlarged time as a Judge or a Master or the Full Court may allow.

*[Rule 8 amended in Gazette 2 July 1982 p.2317;
30 November 1984 p.3952.]*

9. Cross-appeal etc. — Respondent's notice

Cf. W.A. O.LVIII, RR.11, 12. Cf. E. O.59, R.6.

- (1) A respondent who, not having appealed from the decision of the court below, desires to contend on the appeal that the decision of that court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, must give notice to that effect, specifying particulars of the grounds of his contention and the precise form of the order which he intends to ask the Full Court to make, or to make in that event, as the case may be.
- (2) If the respondent desires to contend on the appeal that the decision of the court below should be affirmed on grounds other than those relied upon by that court, he must give notice to that effect specifying particulars of the grounds of that contention.
- (3) Except with the leave of the Full Court, a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the court below should be varied upon grounds not specified in a notice given under this Rule, to apply for any relief not so specified, or to support the decision of the court below upon any grounds not relied upon by that court or specified in such a notice.
- (4) A notice given by a respondent under this Rule must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent and must be served within 21 days after the service of the notice of appeal on the respondent.
- (5) A respondent by whom a notice is given under this Rule must, within 2 days after service of the notice, file a copy of the notice, and if the list and index of documents has been settled, lodge 5 copies of the notice at the Central Office.

10. General powers of the Court

Cf. W.A. O.LVIII, R.9. Cf. E. O.59, R.10.

- (1) The Full Court on any appeal shall have all the powers and duties as to amendment and otherwise of the Court, Judge or Master appealed from together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court.
- (2) The Full Court shall have power to draw inferences of fact and to give any judgment, and make any order which ought to have been made, and to make such further or other order as the case may require.
- (3) The powers of the Full Court under the foregoing provisions of this Rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Full Court may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.
- (4) The powers of the Full Court in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

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- (5) The Full Court may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.
- (6) The Full Court shall have power to make such order as to the whole or any part of the costs of an appeal as may be just.

[Rule 10 amended in Gazette 2 July 1982 p.2318.]

11. Documents impounded by Full Court

Cf. E. O.59, R.10(7), (8).

- (1) Subject to paragraph (2), documents impounded by order of the Full Court shall not be delivered out of the custody of that Court except by order of that Court.
- (2) Documents impounded by order of the Full Court, while in the custody of that Court shall not be inspected except by a person authorised to do so by an order of that Court.

12. Powers of the Full Court as to new trial

Cf. W.A. O.XXXVII, RR.5, 6, 7. Ib. LVIII, R.10. Cf. E. O.59, R.11. Supreme Court Act 1935, s.59.

- (1) If, upon hearing of an appeal, it shall appear to the Full Court that a new trial ought to be had, it shall be lawful for that Court, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.
- (2) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Full Court some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to that Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, that Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.

W.A. O.XXXVII, R.7. Vic. O.58, R.9.

- (3) A new trial shall not be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient, or that the document does not require a stamp.
- (4) The Full Court shall in the order granting a new trial give all necessary directions for further proceedings in the cause.

13. Preparation of the appeal book

W.A. O.LVIII, R.13.

- (1) As soon as is practicable after the notice of appeal has been served and filed, the practitioner acting for the appellant shall make out a list and index of the documents which shall constitute the record before the Full Court, and shall file the list and index in the Central Office and at the same time take out an appointment to settle the same before the Registrar. Forthwith after the appointment has been obtained a copy thereof and of the list and index shall be served on the other parties to the appeal.
- (2) The Registrar may vary the list and index as he thinks proper and may, if he thinks necessary, obtain the direction of the Chief Justice, or of the senior Judge available.
- (3) The appeal book for use upon the hearing of an appeal shall, unless the Court or a Judge otherwise orders, be prepared in accordance with the provisions of Order 69 and every tenth line in each page shall be numbered, or letters placed beside the printed matter in each page at intervals of 50 millimetres.
- (4) The thickness of any one volume of the appeal book shall not exceed 40 millimetres.
- (5) The title page shall give the full and correct title of the proceedings, and the names of the solicitors for each party and their addresses for service.

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- (6) After the title page there shall follow an index consisting of a complete list of the documents contained in the record before the Full Court as settled by the Registrar stating in the case of each document whether it is copied or not, and if copied, indicating at what page of the appeal book it appears.
- (7) The index shall give the date of each document and, in the case of exhibits, the exhibit mark.
- (8) In the index the exhibits shall be arranged in the order in which they have been lettered or numbered.
- (9) The documents shall be arranged in the appeal book in the following order:
 - (a) The notice of appeal, and of cross-appeal (if any).
 - (b) The formal judgment or order of the primary Judge or Court.
 - (c) The reasons for judgment of the primary Judge or Court.
 - (d) Process and pleadings.
 - (e) Evidence, oral or affidavit.
 - (f) Testimony taken on commission or before an examiner and put in or used as evidence.
 - (g) Exhibits:
 - (i) Exhibits shall be arranged not in the order in which they have been lettered or numbered as exhibits, but in chronological order according to the date borne by the documents, or in the case of manifestly or admittedly misdated documents, their known dates.
 - (ii) If a document is undated it shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position or order proposed for the document, and the respondent may require that a note "Date and

order disputed” be inserted in the appeal book at the head of the document.

- (iii) If the exhibits include a correspondence between or among 2 or more persons, or a group of documents which should be read consecutively and not interspersed among other documents, the letters forming the correspondence or the group of documents may be arranged in order of their dates and given a position together at a convenient place in relation to the other exhibits.
- (h) The certificate that the appeal book has been examined and is correct.
- (10) The date and a short description of each document shall precede it, but formal headings shall not be printed or copied, and jurats, formal identification of exhibits and the like shall be omitted.
- (11) Interrogatories and answers, and affidavits of documents must not be copied except so far as they were put in evidence.
- (12) A copy of the appeal book shall be examined with the original documents, and all copies shall be corrected.
- (13) The examined copy of the appeal book shall be filed in the Central Office with a certificate by the parties or their solicitors that it has been examined and is correct.
- (14) The appeal book shall be prepared and produced in a manner satisfactory to the Registrar.
- (15) The costs of the appeal book shall be costs in the cause unless the Full Court shall otherwise order.
- (16) When the evidence of witnesses is transcribed, there shall appear at the bottom of each page of such evidence the name of the witness, and whether he is examined, cross-examined, re-examined, or re-called.

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- (17) Only such documents as are relevant or necessary shall be included in the appeal book. The costs of copies of unnecessary documents or of documents copied at unnecessary length will not be allowed.
- (18) Not less than 2 days before the first day of the sittings at which the appeal or application is set down for hearing, each of the parties shall lodge at the Central Office 5 copies, and such other copies as the Registrar may require, of the list of cases which it is intended will be cited.

*[Rule 13 amended in Gazette 14 December 1979 p.3870;
7 February 1992 p.686.]*

14. Evidence on appeal

Cf. W.A. O.LVIII, R.14. Cf. E. O.59, R.12.

When any question of fact is involved in an appeal, the evidence taken in the court below bearing on such question shall, subject to any direction of a Judge or the Full Court, be brought before that Court in the manner prescribed by Rule 13.

15. Stay of proceedings

Cf. E. O.59, R.13. Cf. Vic. O.58, R.17.

- (1) Except so far as the Full Court or a Judge may direct —
- (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
 - (b) no intermediate act or proceeding shall be invalidated by an appeal.
- (2) On an appeal from a Judge or a Master, interest for such time as execution has been delayed by the appeal shall be allowed unless the Full Court otherwise orders.

*[Rule 15 amended in Gazette 2 July 1982 p.2317;
30 November 1984 p.3952.]*

16. Applications to the Full Court

Cf. E. O.59, R.14(1).

Every application to the Full Court must be by motion, and the provisions of Order 54 shall apply thereto.

17. Discontinuance of an appeal

- (1) Where the respondent has not appealed from the decision of the court below, and has not given notice under Rule 9, and the appeal has not been entered for hearing, the appellant, by filing a notice of discontinuance and serving such notice on the respondent, may discontinue the appeal without leave, and in such case the appellant, unless there is an agreement to the contrary between the parties to the appeal, must pay the respondent's costs of the appeal to be taxed.
- (2) Where the respondent has also appealed, or has given notice under Rule 9, and the appeal has not been entered for hearing, the appellant may with the consent of the respondent, or with the leave of the Court, discontinue the appeal, and where the appeal has been discontinued with the consent of the respondent, a notice of discontinuance indorsed with such consent must be filed, and the appellant, unless there is an agreement to the contrary between the parties, must pay the respondent's costs of the appeal to be taxed.
- (3) When an appeal has been entered for hearing it may be discontinued only by leave of the Full Court.
- (4) Upon the discontinuance of an appeal any moneys paid into court as security for the respondent's costs of the appeal shall be paid out of court in accordance with a memorandum of agreement signed by the parties to the appeal, or as directed by an order of the Court or the Full Court.

18. Masters' jurisdiction under this Order

The powers conferred on a Judge by Rule 2(5), Rule 4(1), Rule 7(1) and (3), Rule 8 and Rule 15(1) may be exercised by a Master.

[Rule 18 inserted in Gazette 13 October 1978 p.3702; amended in Gazette 30 November 1984 p.3952.]

19. Copy of order to be filed

The party extracting the order determining the appeal must file a copy of the order in the proceedings out of which the appeal arose.

[Rule 19 inserted in Gazette 14 December 1979 p.3870.]

Order 63A

[Heading inserted in Gazette 28 October 1996 p.5705.]

Appeals from interlocutory orders and judgments of Judges and Masters

[Heading inserted in Gazette 28 October 1996 p.5705.]

1. Interpretation

In this Order, unless the contrary intention appears —
“**appeal**” includes an application for leave to appeal.

[Rule 1 inserted in Gazette 28 October 1996 p.5705.]

2. Application

This Order applies to an appeal to the Full Court from an
interlocutory order or interlocutory judgment of a Judge or
Master.

[Rule 2 inserted in Gazette 28 October 1996 p.5705.]

3. Commencing an appeal

- (1) The appeal shall be commenced within 21 days after the order
or judgment by filing —
 - (a) a notice of appeal;
 - (b) if necessary, an application for leave to appeal and a
draft notice of appeal; and
 - (c) 2 copies of the appeal papers,and by serving a copy of each on each other party.
- (2) The notice of appeal or draft notice of appeal shall state —
 - (a) the order or judgment appealed against;
 - (b) briefly, but specifically, the grounds of the appeal; and
 - (c) the orders to be sought at the appeal.

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(3) The appeal papers shall consist of all those papers that the appellant considers are necessary for the Court to determine the appeal, including an extracted copy of the order or judgment under appeal.

(4) If a respondent to the appeal considers there are additional papers that are necessary for the Court to determine the appeal, the respondent shall file 2 copies of them and serve a copy on each other party within 14 days after being served under paragraph (1).

[Rule 3 inserted in Gazette 28 October 1996 pp.5705-06.]

4. Directions hearing

(1) As soon as practicable after an appeal is commenced it shall be referred to the Judge or Master who made the order or judgment under appeal, or if that person is absent to another Judge or Master, for a directions hearing in chambers.

(2) At the directions hearing the Judge or Master may —

- (a) direct that an application for leave to appeal not be heard *ex parte*;
- (b) direct that an application for leave to appeal be heard together with the appeal;
- (c) on any application for leave to appeal, grant or refuse leave;
- (d) direct that the appeal or any application for leave to appeal proceed under Order 63;
- (e) make any directions that are necessary or desirable for the expeditious hearing of the appeal.

(3) If at the directions hearing —

- (a) leave to appeal is granted, the draft notice of appeal shall stand as the notice of appeal;
- (b) any order is made *ex parte*, the applicant shall serve any other party with details of the order within 24 hours.

[Rule 4 inserted in Gazette 28 October 1996 p.5706.]

5. Hearing the appeal

- (1) This Rule does not apply to an appeal that has been directed to proceed under Order 63.
- (2) An appeal shall be entered for hearing within 7 days after the directions hearing and if not so entered shall be taken to have been discontinued.
- (3) No appeal books are required for the appeal.
- (4) The appeal shall be heard by the Full Court constituted by 2 Judges unless a Judge or the Full Court directs otherwise.

[Rule 5 inserted in Gazette 28 October 1996 pp.5706-07.]

6. Application of Order 63

Order 63 applies in respect of appeals to which this Order applies unless a contrary intention appears from this Order.

[Rule 6 inserted in Gazette 28 October 1996 p.5707.]

Order 64

Appeals from courts of inferior jurisdiction and from arbitrators

[Heading inserted in Gazette 12 November 1976 p.4275.]

1. Interpretation

In this Order —

- (a) **“the District Court”** means The District Court of Western Australia;
- (b) **“the Family Court”** means the Family Court of Western Australia;
- (c) **“compensation magistrate’s court”** means a compensation magistrate’s court established in accordance with Part VI of the *Workers’ Compensation and Rehabilitation Act 1981*;
- (d) **“the Licensing Court”** means the Liquor Licensing Court;
- (e) **“the Legal Practice Board”**¹² means the Legal Practice Board¹¹ constituted under section 4 of the *Legal Practitioners Act 1893*;
- (f) **“the Children’s Court”** means the Children’s Court of Western Australia;
- (g) **“the Guardianship Board”** means the Guardianship and Administration Board established by section 5 of the *Guardianship and Administration Act 1990*;
- (h) **“Appeals Tribunal”** has the same meaning as in the *Financial Institutions (Western Australia) Act 1992*.

[Rule 1 amended in Gazette 2 July 1982 p.2318; 30 March 1990 p.1573; 28 February 1992 p.997; 26 August 1994 p.4413; 24 October 1995 pp.4917-18; 9 August 1996 p.3950.]

2. Appeal from arbitrator where reference is compulsory

Cf. W.A. O.LIX, R.2. Cf. Vic. O.59, RR. 1, 2.

- (1) Where a compulsory reference to arbitration has been ordered, any party to the reference may appeal from the award or certificate of the arbitrator or Referee upon any question of law; and on the application of any party the Full Court may set aside the award or certificate on any ground on which the Court might set aside the verdict of a jury.
- (2) An appeal under this Rule shall be to the Full Court, which shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or Referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.
- (3) An application to set aside or remit an award must be made within 21 days after the award has been made and made available to the parties; but the Full Court, a Judge or a Master may by order extend the time either before or after it has elapsed.

[Rule 2 amended in Gazette 30 November 1984 p.3952.]

3. Appeals from the District Court, Family Court or Workers' Compensation Board

Cf. W.A. O.LIX, R.11.

- (1) Subject to this Rule, the provisions of Order 63 shall apply with the necessary modifications, to and in relation to appeals to the Full Court from the District Court (including appeals under section 107 of the *Local Courts Act 1904*), the Family Court, the Licensing Court, a compensation magistrate's court, the Legal Practice Board¹¹, the Guardianship Board, the Appeals Tribunal or under section 43(4) of the *Children's Court of Western Australia Act 1988*.

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- (1A) An appeal under section 40(8) of the *Children's Court of Western Australia Act 1988* shall be brought in the time and manner provided for under section 695(1) of *The Criminal Code*.
- (2) An appeal to the Full Court from a court, board or tribunal referred to in paragraph (1) shall be instituted by notice of motion which must be filed and served on —
- (a) all parties directly affected by the appeal;
 - (b) in the case of an appeal from the Licensing Court, any person who appeared before or was heard by the Licensing Court on the hearing of the proceeding to which the appeal relates and on the Director of Liquor Licensing where the appeal relates to a decision made by him; and
 - (c) the registrar or clerk of the court, the secretary of the board or the chairperson of the tribunal from which the appeal is brought,
- within 21 days from the date of the judgment, order, decision or determination appealed from, or within such extended time as may be fixed by the Full Court, a Judge or a Master.
- (3) The notice of motion and all subsequent proceedings in the appeal shall be entitled "In the Supreme Court of Western Australia: The Full Court": "On appeal from (naming the court, board or tribunal from which the appeal is brought)".
- (4) When the appeal is instituted, the registrar or clerk of the court, the secretary of the board or the chairperson of the tribunal from which the appeal is brought shall forthwith upon a request being made by the Registrar transmit to the Registrar —
- (a) a certified copy of the pleadings and other documents (not being exhibits) that were before the court, board or tribunal in the proceedings out of which the appeal arises;

- (b) certified copies of the record of evidence and of the reasons for judgment in those proceedings;
 - (c) a certified copy of the judgment, order, decision or determination appealed from; and
 - (d) a list of the exhibits adduced in evidence and, so far as is practicable, the original exhibits.
- (5) A party served with the notice of motion on an appeal must, within 14 days after service thereof, serve on the appellant a notice of address for service not more than 66 kilometres from the Supreme Court at Perth at which all notices and documents, not required to be served personally, may be served.

[Rule 3 inserted in Gazette 2 July 1982 p.2318; amended in Gazette 31 March 1983 p.1090; 30 November 1984 p.3952; 30 March 1990 p.1574; 28 February 1992 pp.997-8; 26 August 1994 p.4413; 24 October 1995 p.4918; 9 August 1996 p.3950.]

4. Applications for leave to appeal

Cf. H. Ct. Rules, O.70, R.2.

- (1) This Rule applies to —
- (a) an application under section 79(1) of the *District Court of Western Australia Act 1969* or section 107(3) of the *Local Courts Act 1904* for leave to appeal to the Full Court from a judgment or order of the District Court;
 - (b) an application under section 84ZW of the *Workers' Compensation and Rehabilitation Act 1981* for leave to appeal against a decision of a compensation magistrate's court;
 - (c) an application for leave to the Full Court under section 19 of the *Guardianship and Administration Act 1990* from a determination of the Guardianship Board; and

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(d) an application under section 118(1) of the *Adoption Act 1994* for leave to appeal against a decision of the Family Court of Western Australia.

- (2) Subject to this Rule, an application for leave to appeal may be made *ex parte*; but where the applicant thinks fit it may be made upon notice by originating summons.

Cf. Supreme Court Act 1935, s.60(3).

- (3) The application shall be supported by an affidavit of the facts relied on, and shall be made upon notice if the Court so directs.
- (4) Subject to Order 3 Rule 5, the application shall be made not later than 21 days after the date of the judgment, order or decision sought to be appealed from.
- (5) Where an appeal is brought by leave, the notice of appeal shall so state.

[Rule 4 amended in Gazette 14 December 1979 p.3871; 2 July 1982 p.2318; 26 August 1994 p.4413; 24 January 1995 p.271; 9 August 1996 p.3950.]

5. Removal of Local Court appeals into Full Court

- (1) An application for an order under section 107(5) of the *Local Courts Act 1904* to remove into the Full Court an appeal pending in the District Court shall be made by originating summons and within 28 days after the appeal has been instituted.
- (2) Unless the Court otherwise orders, an order of the kind referred to in paragraph (1) shall not be made until the transcript for use upon the hearing of the appeal has been prepared in accordance with the Rules of the District Court and a copy has been filed.
- (3) An appeal removed into the Full Court shall be entered for hearing within 14 days from the day upon which the appeal is ordered to be removed, or within such other period as is fixed by the order; and on default by the appellant in so doing the Full

Court may order that the appeal be dismissed for want of prosecution.

- (4) Unless the Court otherwise orders, no security for the costs of the appeal shall be required from the appellant beyond any security given in accordance with the rules of the District Court.
- (5) Subject to these Rules, the provisions of Order 63 relating to appeals from a Judge apply, as far as practicable, to and in relation to appeals removed into the Full Court.

6. Order of Full Court to be sent to court appealed from

- (1) When an appeal to which this Order applies is determined by the Full Court, the Registrar shall send to the Registrar, clerk or other officer of the court, the secretary of the board or the chairperson of the tribunal from which the appeal was brought a copy of the order of the Full Court on the appeal and a copy of the reasons given by that Court for the determination.
- (2) The party extracting the order on appeal must, when filing the order, lodge at the Central Office for the purposes of paragraph (1) a copy of the order.

*[Rule 6 amended in Gazette 30 March 1990 p.1574;
24 October 1995 p.4918; 9 August 1996 p.3950.]*

Order 65

Appeals from certain statutory boards and tribunals

[Heading amended in Gazette 30 March 1990 p.1574.]

1. Interpretation

In this Order —

“**decision**” includes a direction, order, finding, or other determination (including the granting or refusal of an application);

“**tribunal**” includes the Liquor Licensing Court¹³, and a board, authority or person.

[Rule 1 amended in Gazette 30 March 1990 p.1574.]

2. Application of Order

(1) This Order applies to appeals to the Court —

- (a) from the refusal of the Commissioner of Workplace Agreements to register a workplace agreement under section 31 of the *Workplace Agreements Act 1993*;
- (b) from a decision of the Medical Board under the *Medical Act 1894*;
- (c) from a decision of the Minister under section 21 or section 70 of the *State Housing Act 1946*¹⁴;
- (ca) from a direction, determination or order of the Town Planning Appeal Tribunal under section 54B of the *Town Planning and Development Act 1928*;
- (cb) from a direction, determination or order of a Land Valuation Tribunal under section 35 of the *Land Valuation Tribunals Act 1978*;
- (d) where under the provisions of any Act, an appeal to the Court lies from a decision of any tribunal, and the

procedure to be followed in the conduct of the appeal is not otherwise prescribed.

- (2) This Order is subject to the provisions of the particular Act under which the right of appeal is conferred.

[Rule 2 amended in Gazette 14 December 1979 p.3871; 30 March 1990 p.1574; 1 December 1993 p.6451.]

3. Institution of Appeal

- (1) Every appeal to which this Order applies shall be instituted by filing, within 21 days from the date of the decision against which the appeal is made or if the appeal is against a refusal to register a workplace agreement, from the date of receipt of notice of refusal, a notice of motion complying with Rule 4, and serving within the same time a copy of the notice of motion on each party or person on whom the notice of motion is by this Rule required to be served.
- (2) A copy of the notice of motion must be served on the tribunal from which the appeal is brought, and subject to paragraph (3) on any person (other than the appellant or a person heard as a witness only) who appeared before or was heard by the tribunal on the hearing of the application or other proceeding in which the decision, which is the subject of the appeal, was made or given, or who is or is deemed to be a party to a workplace agreement.
- (3) On any appeal to which this Order applies, a Judge may, either before or on the hearing of the appeal, dispense with the service of the notice of the appeal on any person who appeared before or was heard by the tribunal on the hearing of the said application or other proceeding, or direct that notice of the appeal be given to any other person.
- (4) A person served with notice of the appeal who desires to be heard at the hearing of the appeal, must forthwith after being served, file and serve on the appellant a notice of address for

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service not more than 66 kilometres from the Supreme Court at Perth at which all notices and documents not required to be served personally, may be served.

[Rule 3 amended in Gazette 7 December 1973 p.4489; 31 March 1983 p.1090; 1 December 1993 pp.6451-2.]

4. Contents of notice of motion

The notice of motion must set out —

- (a) the substance of the decision complained of;
- (b) briefly, but specifically, the grounds on which the appeal is brought; and
- (c) an address for service not more than 66 kilometres from the Supreme Court at Perth, at which notices and documents relating to the appeal may be served on the appellant.

[Rule 4 amended in Gazette 7 December 1973 p.4489; 31 March 1983 p.1090.]

5. Title of notice of appeal, etc.

The notice of motion and all subsequent proceedings on appeals to which this Order applies, shall be entitled “In the Supreme Court of Western Australia”, “On appeal from (naming the tribunal from which the appeal is brought), and in the matter of the Act under which the decision the subject of the appeal was given, and in the matter of the application or other proceeding in which such decision was given”.

6. Hearing

- (1) Subject to paragraphs (2), (3) and (4) and the provisions of the Act under which the appeal is brought, the appeal shall be heard by a Judge sitting in Court.
- (2) A Judge may, at any time before the hearing of an appeal, direct that the appeal shall be heard by a Judge sitting in chambers.

- (3) The Judge hearing an appeal in Court may direct that the further hearing of the appeal be adjourned into chambers.
- (4) An appeal from a decision of the Medical Board under section 12(8) of the *Medical Act 1894*, shall be heard by a Judge sitting in chambers.
- (5) An appeal directed pursuant to paragraphs (2), (3) or (4) to be heard or further heard in chambers may be adjourned from chambers into Court.

[Rule 6 amended in Gazette 30 March 1990 p.1574.]

7. Date for hearing

- (1) Unless the Court otherwise orders, an appeal to which this Order applies shall not be heard before the expiration of 21 days from the date when the appeal was instituted.
- (2) Any party may apply to the Court for an order fixing the date for hearing of the appeal.
- (3) Unless an order under paragraph (2) has been made, the day for hearing of the appeal shall be fixed by the proper officer in accordance with the practice of the Court, and the proper officer shall send to the appellant, the tribunal appealed from, and each person on whom the notice of motion has been served and who has filed a notice of address for service, notice of the day fixed for the hearing of the appeal.
- (4) Where the day for hearing of the appeal is fixed by the proper officer it shall not be earlier than 7 days after notice has been sent by him in accordance with paragraph (3).

[Rule 7 amended in Gazette 14 December 1979 p.3871.]

8. Record of proceedings to be supplied

The registrar or other officer of the tribunal appealed from shall within 7 days after service of the notice of motion pursuant to Rule 3(2) send to the Registrar —

- (a) a copy of the proceedings before the tribunal and of the notes of evidence in those proceedings and of the decision of the tribunal to which the appeal relates, all of which must be certified by the registrar or other officer of the tribunal as being a correct record or copy thereof; and
- (b) all the original exhibits produced as evidence in those proceedings.

9. Appeal book

- (1) The appellant must not less than 6 clear days immediately preceding the day fixed for the hearing of the appeal —
 - (a) prepare to the satisfaction of the Registrar an appeal book containing all material relevant to the hearing of the appeal;
 - (b) lodge at the Central Office 3 copies of the appeal book so prepared, for the use of the Judge upon the hearing;
 - (c) serve upon each other party separately represented one copy of such appeal book.
- (2) Unless the Court otherwise orders, the costs of complying with this Rule shall be costs in the cause.

[Rule 9 amended in Gazette 7 February 1992 p.686.]

10. Appeal to be in nature of rehearing

- (1) Subject to paragraph (2), the appeal shall be in the nature of a rehearing, and the Judge hearing the appeal may confirm, quash or vary the decision of the tribunal against which the appeal is made or remit the matter to the tribunal for rehearing, with or without directions.

- (2) The Judge may determine the appeal on the material that was before the tribunal when it gave its decision or, by special order given before or at the hearing, on such additional or fresh evidence, either oral or by affidavit, as may be allowed, or partly in the one way and partly in the other, and the Judge may rehear the testimony of any witness, whether by way of examination or cross-examination, and any party to the appeal may be represented by counsel.

[Rule 10 amended in Gazette 14 December 1979 p.3871.]

11. Order

- (1) The result of the appeal shall be embodied in a formal order, which shall be filed in the Central Office.
- (2) Except where the formal order is filed by or on behalf of the tribunal, the Registrar shall send to the registrar or other officer of the tribunal from which the appeal was brought, a memorandum of the result of the appeal.
- (3) Where the appeal is from a decision of the Medical Board a minute of the formal order must be entered by the registrar of the Board in the Register of Medical Practitioners kept pursuant to the *Medical Act 1894*.

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 shall apply to proceedings under this Order with such modifications as the circumstances require.

13. Costs

The costs of every appeal instituted under this Order, and of any proceedings incidental thereto are in the discretion of the Judge hearing the appeal.

Order 65A

[Heading inserted in Gazette 19 April 1991 p.1715.]

Appeals under Justices Act 1902

[Heading inserted in Gazette 19 April 1991 p.1715.]

1. Interpretation

- (1) In this Order, unless the contrary intention appears —
 - (a) words used have the definitions assigned to them by sections 4 and 183 of the *Justices Act 1902*; and
 - (b) the following further definitions apply —

“**party**” includes a person to whom a Judge has directed under section 191(b) of the Act that notice of an appeal be given; and

“**the Act**” means the *Justices Act 1902*.
- (2) Subject to the Act and this Order, the rules of Court apply to this Order.
- (3) This Order applies to appeals from an order of a magistrate under Part 5 of the *Service and Execution of Process Act 1992* of the Commonwealth.

[Rule 1 inserted in Gazette 19 April 1991 p.1715; amended in Gazette 1 March 1994 p.788.]

2. Application for leave

An application for leave to appeal shall —

- (a) be made in Form 82A and shall state briefly but specifically the grounds relied upon;
- (b) be filed and served on the clerk of petty sessions within 21 days after the day on which the decision to which the application relates was given; and

(c) be supported by an affidavit of the facts relied on.

[Rule 2 inserted in Gazette 19 April 1991 p.1715; amended in Gazette 24 October 1995 p.4918; 16 July 1999 p.3194.]

2AA. Clerk to forward petty sessions court record

The clerk of petty sessions served under Rule 2(b) shall deliver to the Registrar the Court of Petty Sessions' record relating to the matter the subject of the appeal including —

- (a) all exhibits;
- (b) the transcript of evidence; and
- (c) any notes or transcripts of reasons for decision and sentencing remarks.

[Rule 2AA inserted in Gazette 16 July 1999 p.3195.]

2A. Order granting leave

An order granting leave to appeal shall be in Form 82AA or such other form as the Court may approve.

[Rule 2A inserted in Gazette 24 October 1995 p.4918.]

3. Further evidence

- (1) An application for leave to adduce further evidence under section 196(1)(b) of the Act shall be made by notice of motion supported by an affidavit showing the nature of the evidence and the basis on which the Court will be asked to receive it.
- (2) The notice of motion shall be served on every other party to the appeal.

[Rule 3 inserted in Gazette 19 April 1991 p.1715.]

4. Security for costs

Subject to section 219 of the Act, a Judge may, in special circumstances, order that security shall be given for the costs of an appeal as may be just, and may vary or revoke any such Order.

[Rule 4 inserted in Gazette 19 April 1991 p.1715.]

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5. Manner of giving notice to other parties etc.

Notice under section 191 of the Act shall be given —

- (a) within 10 days after the day on which leave to appeal is granted or within such longer period as the Judge who grants leave may allow; and
- (b) by serving on every party, a copy of the application for leave, the order granting leave and the affidavits and documents filed in support of the application.

[Rule 5 inserted in Gazette 19 April 1991 p.1715.]

6. Notice to clerk of petty sessions etc.

- (1) The Registrar shall, as soon as is practicable after leave is granted, send to each of the following persons a memorandum as to the making of the order granting leave —
 - (a) the clerk of petty sessions, and attach a copy of the application for leave;
 - (b) any person having the appellant in custody; and
 - (c) the Commissioner of Police where the decision that is subject to appeal was made in, or in relation to, proceedings for a charge for an offence.

- (2) Where the appellant is in a prison, it is sufficient compliance with subparagraph (b) of paragraph (2) for notice under that subparagraph to be given to the chief executive officer of the Department, as defined in section 3 of the *Prisons Act 1981*.

[Rule 6 inserted in Gazette 19 April 1991 p.1715.]

7. Clerk to notify justices

The clerk of petty sessions to whom notice is given under Rule 6(1) shall, as soon as is practicable, give a copy of the application and order granting leave to the justices whose decision is subject to appeal.

[Rule 7 inserted in Gazette 16 July 1999 p.3195.]

8. Notice of intention to be heard

- (1) A party who wishes to be heard on the hearing of the appeal shall file a notice of intention to be heard, and serve a copy of the notice on the other parties on the day on which it is filed or as soon as is practicable after that day.
- (2) The notice shall be filed within 14 days of service on the party of notice under Rule 5.
- (3) This Rule does not apply to a party who gives notice under Rule 9.
- (4) A party who has not given notice in accordance with this Rule shall not be heard without the leave of the Court.

[Rule 8 inserted in Gazette 19 April 1991 p.1716.]

9. Orders 63 and 65 apply

Subject to the Act and this Order, the provisions of Order 63 and Order 65 apply with necessary modifications to appeals under this Order.

[Rule 9 inserted in Gazette 19 April 1991 p.1716.]

10. Notification of result of appeal by Registrar

- (1) The Registrar shall, in addition to complying with section 202 of the Act, send a memorandum of the determination of the Court on an appeal or of the dismissal of an appeal under section 205 of the Act —
 - (a) to the Commissioner of Police, where the decision that was subject to appeal was made in, or in relation to, proceedings for a charge for an offence;
 - (b) to any other person having the appellant in custody;
 - (c) where any party to the appeal is on bail pending the disposition of the appeal, to the chief executive officer of the Department as defined in section 3 of the *Prisons Act 1981*; and

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- (d) to any party to the appeal who —
 - (i) was not present, or represented by a legal practitioner, at the hearing or was not an applicant under section 206B, as the case may be; and
 - (ii) has filed under Rule 8 a notice of intention to be heard.
- (2) Where the appellant is in a prison, it is sufficient compliance with subparagraph (b) of paragraph (1), for notice under that subparagraph to be given to the chief executive officer of the Department as defined in section 3 of the *Prisons Act 1981*.
[Rule 10 inserted in Gazette 19 April 1991 p.1716.]

11. Application for re-instatement of appeal

An application by an appellant under section 206(1) of the Act shall be made —

- (a) in Form 82B;
- (b) within 21 days of service on the appellant of a memorandum under Rule 10 as to the dismissal of the appeal under section 205 of the Act;
- (c) ex parte (unless the Judge orders that the application be served on any person) and supported by an affidavit of the facts relied on and stating the grounds of the application.

[Rule 11 inserted in Gazette 19 April 1991 p.1716; amended in Gazette 24 October 1995 p.4919.]

12. Appeal to Full Court

- (1) An application under section 206A of the Act for leave to appeal to the Full Court from a decision of the Court constituted by one Judge shall be made within 21 days after the day on which that decision was given.

- (2) Notice of the application shall be given by the applicant —
 - (a) to the other party or parties to the appeal; or
 - (b) where the application for leave relates to an application under section 206C to extend or shorten the time allowed under Rule 2(b), to the other party or parties to the decision of the justices,

within the period allowed under paragraph (1).

[Rule 12 inserted in Gazette 19 April 1991 p.1716.]

13. Orders for costs

- (1) Where under Part VIII of the Act the Court may make an order as to costs, the Court may —
 - (a) fix the sum to be paid;
 - (b) order that the sum be determined by taxation; or
 - (c) make an order providing partly for one of those methods and partly for the other.
- (2) If the Court intends to make an order pursuant to section 5 of the *Official Prosecutions (Defendants' Costs) Act 1973* it may, if it thinks fit, refer to a Registrar for inquiry and report the amount at which the costs shall be fixed.
- (3) Upon such an inquiry the Registrar shall have power to require that the defendant furnish details of the costs, allowances and expenses claimed, and that such details be verified by affidavit.

[Rule 13 inserted in Gazette 19 April 1991 p.1717.]

14. Service

- (1) Where any provision of Part VIII of the Act or of these Rules authorises or requires a document in any proceedings to be served on, or a notice to be given to, a person the service or the giving of notice may be effected —
 - (a) by personal service on the person;

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- (b) by properly addressing and posting (by pre-paid post) the document as a registered letter to the last-known place of residence or place of business of the person; or
 - (c) by leaving the document at the place of residence of the person with a member of the person's family living with him or her and appearing to be of or over the age of 16 years; or
 - (d) without limiting section 215 of the Act, by serving the document, in accordance with subparagraph (a) or (b), on a solicitor who is acting for the person in the proceedings.
- (2) Personal service of a document is effected on a person for the purposes of paragraph (1)(a) by leaving a copy of the document with the person and if so requested by the person at the time when it is left showing him or her an office copy of the document.
- (3) For the purposes of paragraph (1)(b) service or the giving of notice is deemed to be effected under that paragraph, unless the contrary is proved, at the time when the letter would have been delivered in the ordinary course of post.

[Rule 14 inserted in Gazette 19 April 1991 p.1717.]

15. Substituted service

- (1) Where the Court is satisfied, upon application by a party sufficiently supported by affidavit evidence, that it is impracticable for a document to be served on, or a notice to be given to, a person in accordance with Rule 14, it may order that service be effected or notice be given by the taking of such steps as the Court directs.
- (2) Compliance with an order under paragraph (1) is to be taken to be personal service under Rule 14(1)(a).

[Rule 15 inserted in Gazette 19 April 1991 p.1717.]

Order 65B

[Heading inserted in Gazette 28 October 1996 p.5707.]

Appeals generally

[Heading inserted in Gazette 28 October 1996 p.5707.]

1. Application

This Order applies to any appeal to a Judge or the Full Court.

[Rule 1 inserted in Gazette 28 October 1996 p.5707.]

2. Interpretation

In this Order unless the contrary intention appears —

“**Appeals Registrar**” means a Registrar appointed as such by the Chief Justice;

“**mediator**” means a person approved as such by the Chief Justice, or a Mediation Registrar (as defined in Order 29).

[Rule 2 inserted in Gazette 28 October 1996 p.5707.]

3. Appeal Registrar’s powers

(1) The Appeals Registrar may —

- (a) direct the parties to an appeal to attend a conference with a mediator for the purpose of identifying, resolving and narrowing the points of difference between them; but shall not, without the consent of the parties, direct that a conference take place where a party would become liable to remunerate a mediator;
- (b) by direction limit the time to be taken by a party in presenting its case.

(2) If under paragraph (1)(b) the Appeals Registrar imposes a time limit, the parties shall each file written submissions of not more than 20 pages, unless the Appeals Registrar directs otherwise.

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- (3) In deciding whether to make such a direction imposing a time limit, the Appeals Registrar shall have regard to these matters in addition to any other matters that may be relevant:
- (a) the complexity or simplicity of the appeal;
 - (b) the state of the Court lists;
 - (c) the time expected to be taken for the appeal; and
 - (d) the importance of the issues and the case as a whole.

[Rule 3 inserted in Gazette 28 October 1996 p.5708.]

Order 66

Costs

1. General rules as to costs

Cf. W.A. O.LXV, R.1(1).

Vide Supreme Court Act 1935, s.37.

- (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

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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 or several defendants, etc.

Ib. R.1(2).

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: non-admission of facts or documents

Cf. E. O.62, R.3(2)(5).

- (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. Costs out of fund or property

Cf. W.A. O.LXV, RR.2, 3, 4.

- (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. Liability of solicitor

Cf. W.A. O.LXV, R.6. Cf. E. O.62, R.8.

- (1) Where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default the Court may make against any solicitor whom it considers to be responsible (whether personally or through a servant or agent) an order —
 - (a) disallowing the costs as between the solicitor and his client;
 - (b) directing the solicitor to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; and

- (c) directing the solicitor personally to indemnify any party other than his client against costs payable by the party indemnified.
- (2) No order under this Rule shall be made against a solicitor 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 solicitor to attend in person or by a proper representative; or
 - (b) because of the failure of the solicitor 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 solicitor under this Rule shall be given to his client in such manner as may be specified in the direction.

6. Costs of solicitor guardian *ad litem*

Cf. W.A. O.LXV, R.7. Cf. S.A. O.65, R.9. Cf. Tas. O.80, R.5.

- (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.

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- (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

W.A. O.LXV, R.8.

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. Costs of Law Officers

Ib. R.9.

In all actions or matters in which a Law Officer or other solicitor employed by the Crown or any instrumentality of the Crown 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 practitioner engaged by such party.

[Rule 8 amended in Gazette 19 December 1975 p.4571.]

9. Restriction of discretion to order costs

Cf. W.A. O.XXI, R.18. Cf. E. O.62, R.6(1)(d). Cf. E. O.62, R.6(2).

- (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

Cf. E. O.62, R.4.

- (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;
 - (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

Cf. W.A. O.LXV, R.17.

- (1) For the purposes of this Order —
 “any relevant scale” means any scale regulating the remuneration of practitioners admitted to practice under the *Legal Practitioners Act 1893* in or for the purposes of proceedings before the Court.
- (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 Practitioners Act 1893*, permitting a solicitor to make a written agreement as to costs with his client, 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 in Gazette 7 February 1992 pp.686-7.]

12. Costs in particular cases

Cf. W.A. O.LXV, R.18.

- (1) Where the Court is of opinion that a special order as to costs should be made by reason of the unusual complexity or importance of the case or for any other good or sufficient reason the Court may order that any particular allowances in any relevant scale be raised or a limit removed and in giving any such direction the Court may fix a limit within which the Taxing Officer may allow such costs.
- (2) In regard to any particular item or section of costs where the quantum of work performed does not justify the allowance of a fee according to the said scale or a fee equal to the minimum fee prescribed, the Court or Taxing Officer may fix such fee as in the opinion of the Court or Taxing Officer is just and reasonable.
- (3) The Court may award a lump sum by way of costs or may direct that a party entitled to costs shall recover only a proportion of the costs under the said scale.
- (4) Where on an appeal, or on an appeal and cross-appeal, it is desirable that costs be apportioned as between any of the parties, the Court may itself make the apportionment or may refer the matter to the Taxing Officer for his determination, with such directions as it considers necessary.
- (5) On a reference to a Master or a Referee of any question for inquiry or report, or of any cause, matter, question, or issue for trial or determination, the order of reference may direct the basis on which the costs of the reference are to be taxed and allowed, and in the absence of such direction the costs (other than the costs of a reference for inquiry or report) shall be in the discretion of the Master or Referee who may give any direction necessary for the taxation thereof. If the order of reference for inquiry or report does not direct the basis on which the costs are to be assessed, the question shall be reserved to the Judge.

*[Rule 12 amended in Gazette 30 November 1984 p.3952;
7 February 1992 p.687.]*

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13. Costs where scale does not apply

lb. R.18A.

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 in Gazette 7 February 1992 p.687.]

14. Lump sum — interim award

lb. R.18B.

- (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. Repealed in Gazette 19 December 1975 p.4572.]

[16. Repealed in Gazette 7 February 1992 p.687.]

17. Costs in small claims

Ib. R.21.

- (1) If an action is brought in the Supreme Court which could have been brought in a Local 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 a Local 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 a Local 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.

18. Matters not provided for in the scale

Ib. R.22.

- (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 paragraph (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

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- (b) for a conference or consultation where and to the extent that the conference or consultation was necessary.

[Rule 18 inserted in Gazette 19 December 1975 pp.4572-3; amended in Gazette 14 December 1979 p.3871; 7 February 1992 p.687.]

19. Allowances 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 in Gazette 30 June 2000 p.3418.]

20. Basis for calculation of costs

Ib. R.24.

- (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 in Gazette 30 November 1984 p.3952.]

21. Costs where no substantial trial

lb. R.25.

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 in Gazette 19 December 1975 p.4573;
7 February 1992 p.687.]*

[22. Repealed in Gazette 19 December 1975 p.4573.]

23. Certain fees may be increased in special circumstances

Ib. R.27.

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 in Gazette 19 December 1975 p.4573;
7 February 1992 p.687.]*

24. Costs of solicitor when money recovered by or on behalf of infant, etc.

Cf. E. O.62, R.30.

- (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 Full Court on an application or appeal made in connection with any proceedings to which this Rule applies by virtue of subparagraph (a).
- (3) Except as provided by paragraph (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) Paragraph (3) applies in relation to any proceedings to which this Rule applies by virtue of paragraph (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 the foregoing provisions of this Rule shall prejudice a solicitor's lien for costs.
- (7) The foregoing provisions of this Rule 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.

[25-31. Repealed in Gazette 19 December 1975 p.4573.]

Taxation of Costs

32. Bills of costs to be taxed

Ib. R.35.

- (1) Unless the Court in a particular case otherwise directs, bills of costs and fees which are payable to 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.

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Cf. E. O.62, R.11(1).

- (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.

33. Indorsements on bill of costs

Cf. W.A. O.LXV, R.37.

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, and also the name and address of the solicitor (if any) for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be taxed.

34. When notice of taxation need not be given

Cf. W.A. O.LXV, R.36. Cf. E. O.62, R.22(3).

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

W.A. O.LXV, R.38.

- (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 to be lodged

A party leaving a bill of costs for taxation must lodge 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 in Gazette 19 December 1975 p.4573.]

37. Solicitor delaying taxation

Ib. R.39.

Where any solicitor fails to leave 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.

38. Appointment to be peremptory

Ib. R.40.

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

Ib. R.41.

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 carry in his bills of costs for taxation and may limit a time for that purpose.

40. Default by party in taxing costs

Ib. R.42.

When a party entitled to costs refuses or neglects to bring in 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.

41. Where costs payable out of property notice to clients may be directed

Ib. R.43.

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. Form of bills of costs

Cf. H. Ct. O.71 R.35.

- (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;
 - (b) dates of items (specifying years, months and days);

- (c) where necessary, particulars of the services charged for;
 - (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 in Gazette 30 August 1974 p.3242; amended in Gazette 19 December 1975 p.4573.]

43. Taxing Officer determines questions of fact

Ib. R.45.

The decision of the Taxing Officer on all questions of fact shall be final.

44. Power of Taxing Officer

Ib. R.46.

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 in Gazette 26 March 1993 pp.1845-6; 26 August 1994 p.4415.]

45. Reference 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

W.A. O.LXV, R.47.

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. Costs of interrogatories, discovery

Ib. R.48.

- (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. following event

Ib. R.49.

- (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. Where motion, etc. stood over to trial and no order made as to costs

Ib. R.50.

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

Ib. R.51.

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. Where Court may fix costs

Ib. R.52.

- (1) Where in any action or matter taxation of costs is not ordered, or any special costs are by these Rules or by any order reserved for the consideration of the Court at trial, the Court may fix the

amount of costs payable, or the amount of such special costs, and in every judgment or order of the Court where the question of costs is not specifically dealt with there shall be deemed to be reserved to any party interested liberty to apply within 30 days.

- (2) Where under these Rules a party is required to obtain some special certificate for costs, there shall be deemed to be reserved to such party liberty to apply within 30 days.

52. Leave to refer to Judge where costs to be apportioned, etc.

Ib. R.53.

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.

Review of Taxation

53. Party dissatisfied with taxation may object

Ib. R.54.

- (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. Taxing Officer may review taxation

Ib. R.55.

- (1) Upon an application under the last preceding Rule 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 in Gazette 7 February 1992 p.687.]

55. Taxation may be reviewed by a Judge

Ib. R.56.

- (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

Ib. R.57.

An application under the last preceding Rule 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.

Miscellaneous

57. Taxing Officer's certificate enforceable as a judgment

Ib. R.58.

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

Ib. R.59.

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. Power of Taxing Officer where party liable to be paid and to pay costs

Cf. E. O.62, R.18.

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. Taxing Officer to assist in settling costs on taking of accounts

W.A. O.LXV, R.60.

- (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 in Gazette 14 December 1979 p.3871.]

61. Interim certificate in matters of account

ib. O.LI, R.19.

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

Cf. W.A. O.LXI, R.2. Cf. E.O.63, R.2.

The senior Master shall superintend the business of the Central Office and shall give any directions that may be required on questions of practice and procedure.

[Rule 1 inserted in Gazette 14 December 1979 p.3871; amended in Gazette 30 November 1984 p.3952. See Supreme Court Act 1935 s.166(2).]

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 in Gazette 14 December 1979 p.3871.]

3. Taking of oaths

Cf. W.A. OLXI, R.4.

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 in Gazette 14 December 1979 p.3871; amended in Gazette 30 November 1984 p.3952.]

4. Seals

Ib. R.5.

The official seals to be used in the Central Office shall be such as the Chief Justice from time to time directs.

5. Abuse of process: Reference by Registrar to Judge

- (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 paragraphs (2) and (3) shall be made *ex parte* and shall be supported by affidavit.

[Rule 5 inserted in Gazette 24 January 1995 p.271.]

6. Office copies, etc.

Ib. R.6.

All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

7. Petition, award, etc., to be filed before judgment, etc. passed

Cf. W.A. O.LXI, R11.

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

Ib. R.13.

Proper indexes or calendars to the files or bundles of all documents filed at the Central Office shall be kept, so that the same may be conveniently referred to when required.

9. Date of filing to be marked, etc.

Ib. RR.12, 14. Cf.E. O.63, R.3.

- (1) All documents filed in the Central Office in any proceedings must be sealed with a seal showing the date on which the document was filed.
- (2) There shall be entered in records kept in the Central Office for the purpose particulars of the date of delivery at the Central Office 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 in Gazette 26 March 1993 p.1846.]

10. Custody and searches of records

Cf. W.A. O.LXI, R.18 Cf. H. Ct. O.58 R.7.

- (1) The Principal Registrar shall have the custody of all records and other documents kept or filed, or ordered to be deposited for safe custody, or impounded, in the Central Office.
- (2) The Principal Registrar shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee,

cause a search to be made in the registers or indexes in his custody, and issue a certificate of the result of the search.

[Rule 10 inserted in Gazette 14 December 1979 p.3871; amended in Gazette 1 August 1980 p.2559.]

11. Inspection

Cf. W.A. O.LXI, R.13. Cf. E. O.63, R.4.

Cf. Matrimonial Causes Rules (Clth) R.299.

- (1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Central Office, namely —
 - (a) the copy of any writ, and the statement of claim (if any) indorsed thereon under Order 6 Rule 3;
 - (b) the copy of any petition under the *Companies Act 1961*¹⁵;
 - (c) any judgment or order given or made in court or the copy of any such judgment or order; and
 - (d) with the leave of the Court or a Registrar, any other document other than an agreement lodged with or registered by the Commissioner of Workplace Agreements.
- (1a) Rule 1 does not apply in relation to documents filed, or judgments or orders made, in any cause or matter under the *Witness Protection (Western Australia) Act 1996* or the *Surveillance Devices Act 1998*.
- (2) An application under paragraph (1)(d) may be made ex parte.
- (3) Nothing contained in this Rule shall be construed as preventing any party to a cause or matter searching for, inspecting, and taking or bespeaking a copy of any affidavit or other document filed in the Central Office in that cause or matter or filed therein before the commencement of that cause or matter, but made with a view to its commencement.

[Rule 11 amended in Gazette 14 December 1979 p.3871; 1 December 1993 p.6452; 16 July 1999 p.3195.]

12. Deposit of documents

W.A. O.LXI, R.22.

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

Cf. W.A. O.LXI, R.20. Cf. E. O.63, R.9.

- (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 in Gazette 14 December 1979 p.3871.]

14. Deposit for officer's expenses

Cf. W.A. O.LXI, R.21.

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

CF. W.A. O.LXI, R.23.

All petitions and written admissions of evidence whereon any order is founded, and all awards on submissions to arbitration

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made orders of the Court, shall be transmitted to and left at the Central Office, to be there filed or preserved, and all office 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.

16. New forms

Cf. W.A. O.LXI, R.35.

The senior Master 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 the Second Schedule, or of such modified forms, as may be deemed expedient.

[Rule 16 amended in Gazette 30 November 1984 p.3952.]

17. Application of certain rules to accounts etc. taken by Registrar

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 in Gazette 14 December 1979 p.3872; amended in Gazette 1 August 1980 p.2559.]

18. Reference in judgment to Registrar

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 in Gazette 14 December 1979 p.3872.]

[19-21. Repealed in Gazette 28 October 1996 p.5708.]

Order 68

Sittings, vacations and office hours

1. Full Court and civil sittings

W.A. O.LXIII, R. 1.

- (1) The sittings of the Full Court and 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.

2. Criminal sittings

Ib. R.2.

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. Vacations¹⁶

Ib. R.4.

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 amended in Gazette 23 September 1983 p.3798;
26 August 1994 p.4413.]*

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4. Days included in sitting and vacation

Ib. R.5.

The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

5. Offices — days on which 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 in Gazette 9 November 1973 p.4165;
26 August 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 in Gazette 10 November 1995 p.5247.]

7. Vacation Judge

Cf. W.A. O.LXIII, RR.9, 10. Cf. S.A. O.63, R.3.

- (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. Regulations as to printing and photography

Cf. W.A. O.LXVI, R.2. Cf. E. O.66, R.2.

- (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 facsimile 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 facsimile of any printed or typewritten matter be treated for the purpose of these Rules as if it were printed.

2. Requirements as to documents

Cf. W.A. O.LXVI, R.4. Cf. Vic. O.66, R.2.

- (1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court shall, subject to any directions given from time to time by the senior Master —
 - (a) be legibly and clearly typewritten or printed without blotting, erasure or such alterations as cause material disfigurement;
 - (b) have a space of not less than 6 millimetres between each line;

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- (c) be upon white paper of good and durable quality and capable of receiving ink writing and of such size as the senior Master from time to time directs;
- (d) be on either —
 - (i) one side only of the paper with a margin of not less than 40 millimetres on the left hand side of each sheet; or
 - (ii) both sides of the paper with a margin of not less than 40 millimetres on the left hand side of the front of each sheet and not less than 40 millimetres on the right hand side of the back of each sheet;
- (da) commence on a fresh sheet;
- (e) have each page numbered;
- (f) have the sheets fastened only at the top left hand corner;
- (g) not have the sheets folded;
- (h) 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;
 - (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 millimetres —
 - (iii) the date of the document;
 - (iv) the party on whose behalf it is filed, delivered or served;
 - (v) the name, address, telephone number and document exchange number of the solicitor (if any) filing, delivering or serving the document and the name of a person in the office of the solicitor to whom reference can be made concerning the proceedings; and

- (vi) where the party filing, delivering or serving the document is not represented by a solicitor, the name, address and telephone number of the party.
- (1a) Except in the case of —
- (i) an originating process;
 - (ii) a document to be served on a person who is not a party to a proceeding; or
 - (iii) a final judgment or order,
- a document may show an abbreviation of the title of the proceeding which is sufficient to identify the proceeding.
- (2) The Registrar may refuse to file or accept a document to which paragraph (1) applies if it does not comply with the provisions of that paragraph, and the costs of the document may be disallowed upon taxation.
- (3) A typewritten copy of a document to which paragraph (1) applies shall not be filed, registered or marked as an office copy unless it is a first black ink copy.
- (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 any document required for use in the Supreme Court to be printed or otherwise produced in any particular manner that it thinks fit.

*[Rule 2 amended in Gazette 7 December 1973 p.4489;
30 November 1984 p.3952; 15 December 1989 p.4520;
24 October 1995 p.4919.]*

3. Direction of Court as to cost of printing, shorthand, recording

Cf. Vic. O.66, R.2(5).

Where, by any order of the Court any document is ordered to be printed or typewritten or otherwise produced, or where any part of the proceedings is taken in shorthand or is recorded, the Court may order the expense thereof to be borne and allowed and copies or transcripts thereof to be furnished, by and to such parties and upon such terms as shall be thought fit.

4. Copies of documents for the other parties

Cf. W.A. O.LXVI, R.7. Cf. E. O.66, R.3. Cf. Vic. O.66, R.3.

- (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

Cf. W.A. O.LXVI, R.7(5). Cf. E. O.66, R.4(2), (3).

- (1) Before a copy of a document is supplied to a party under this Order, it must be indorsed with the name and address of the party or solicitor by whom it was supplied.
- (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 or of an office copy, as the case may be.

6. Copies of affidavits on certain ex parte applications

Cf. W.A. O.LXVI, R.8.

- (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 paragraph (1) or within such time as may be specified in the request or may be directed by the Court.

Order 70

Disability

1. Interpretation

In this Order unless the contrary intention appears —

“person under disability” means —

- (a) a person who is an infant;
- (b) a represented person; or
- (c) a person not being a person referred to in paragraphs (a) or (b), who, by reason of mental illness, defect or infirmity, however occasioned, is declared by the Court to be incapable of managing his affairs in respect of any proceedings to which the declaration relates;

“represented person” means a represented person within the meaning of the Act;

“the Act” means the *Guardianship and Administration Act 1990*.

[Rule 1 inserted in Gazette 22 July 1994 p.3746.]

2. Persons under disability suing or defending

Ib. R.2. Cf. W.A. O.XVI, R.20.

- (1) Subject to paragraph (4) a person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not 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 him, except by his 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 shall or may, if the party is a person under disability, be done by his 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.

3. Appointment of next friend or guardian *ad litem*

Cf. E. O.80, R.3

- (1) This Rule does not apply in relation to a probate action.
- (2) Save as provided by paragraphs (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.
- (3) If a person under a disability is a represented person in respect of whom —
 - (a) a plenary guardianship or administration order has been made under the Act; or
 - (b) a limited guardianship or administration order has been made under the Act, which authorises the guardian or administrator, as the case may be, to conduct legal proceedings in the name of the person under a disability or on his behalf,

the guardian or administrator shall act as next friend or guardian *ad litem*, as the case may be, of the represented person in any proceedings unless, in a case to which paragraph (5) or (6) or Rule 6 applies, 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.

- (4) In respect of a represented person within the meaning of the *Public Trustee Act 1941*, the Public Trustee shall be the next friend or guardian *ad litem* as the case may be.
- (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 shall be 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 him such friend or guardian in substitution for the person previously acting in that capacity.
- (6) Where, after the commencement of any proceedings, a party thereto becomes a person under a disability, an application shall 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) Unless 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 paragraph (3), or is the Public Trustee —
 - (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability;
 - (b) an appearance shall not be entered in a cause or matter for a person under disability; and
 - (c) a person under disability shall not be entitled to appear by his guardian *ad litem* on the hearing of a petition, summons or motion, which, or notice of which has been served on him,

unless and until the documents specified in paragraph (8) have been filed.

- (8) The documents referred to in paragraph (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;

- (b) where the person proposing to be the next friend or guardian *ad litem*, as the case may be, of a represented person is authorised under Part 5 or Part 6 of the Act to conduct proceedings in the cause or matter in question in the name of the represented person or on his behalf, a copy of the order made under Part 5 or Part 6 of the Act giving such authority; and
- (c) except where the person proposing to be such friend or guardian of a represented person is so authorised under Part 5 or Part 6 of the Act, an affidavit by the solicitor for the represented person deposing —
 - (i) that he 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 his knowledge or belief; and
 - [(ii) *deleted*]
 - (iii) that the person named in the affidavit as next friend or guardian, as the case may be, has no interest in the cause or matter in question adverse to that of the person under disability;
 - (iv) 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 such next friend or guardian, as the case may be.

[Rule 3 amended in Gazette 22 July 1994 pp.3746-8.]

4. Probate actions: Special provisions

Cf. E. O.80, RR.4, 5.

- (1) This Rule applies in relation to a probate action.
- (2) Save as provided in paragraph (3) a person shall not act in a probate action as next friend or guardian *ad litem* of a person

under disability unless he has been 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, he is the guardian or administrator appointed under Part 5 or Part 6 of the Act 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) he 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 subparagraph (b) and the person is one of the next of kin of the infant or if the infant is a married woman, is her husband, and has been appointed by him or her to act as his or her 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 him in the action (where he is a defendant, intervener or person cited) without the consent of a Master.
- (5) On the application for a consent under paragraph (4) there must be produced to the Master, in the case of a represented person a copy of the order under Part 5 or Part 6 of the Act 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 subparagraph (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 he has no interest in the action adverse to that of the infant, and is a next-of-kin of the infant, or is her husband.

[Rule 4 amended in Gazette 30 November 1984 p.3952;
22 July 1994 p.3748.]

5. Where person under disability does not appear

Cf. E. O.80, R.6.

- (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 that person) 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 paragraphs (1) or (2) must be supported by evidence proving —
 - (a) that the person to whom the application relates is a person under disability;
 - (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;
 - (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 paragraph (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 him.

- (6) The Court may order that notice of an application under paragraphs (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 paragraph (3) or (4) must be supported by evidence proving the matters referred to in paragraph 5(b).

6. Discharge or variation of certain orders

E. O.80, 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 him.

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.

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- (2) An application under this Rule shall 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.

8. No implied admission from pleading

E. O.80, R.8

Notwithstanding anything in Order 20 Rule 14(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

9. Discovery and interrogatories

Ib. R.9.

Orders 26 and 27 shall apply to a person under disability and to his next friend or guardian *ad litem*.

10. Compromise 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 Full Court) in which there is a claim by or on behalf of or against a person under disability, shall be valid unless it is approved by the Court.
- (2) An application for approval under paragraph (1) —
- (a) if made before the hearing of a cause or matter, shall be by summons in chambers;
 - (b) if made during the trial of an action or issue, shall be to the trial Judge on motion,

and shall be supported by affidavit and by the opinion of an independent counsel; but the Court or Judge 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 in Gazette 7 October 1977 p.3602.]

10A. Compromise of appeal by person under disability

- (1) No settlement or compromise of an appeal to the Full Court to which a person under disability is a party shall be valid unless it is first approved by a Judge.
- (2) An application for approval under paragraph (1) shall be made by summons in chambers and shall be supported by affidavit and by the opinion of an independent counsel; but the Judge may dispense with the necessity of obtaining counsel’s opinion.
- (3) Where a Judge has approved of the settlement or compromise of an appeal of the kind mentioned in paragraph (1), the appellant shall, as soon as practicable, apply to the Full Court on motion for an order to give effect to the settlement or compromise.

[Rule 10A inserted in Gazette 7 October 1977 p.3603.]

11. Compromise before action

Cf. W.A. O.XVIA, R.2. Cf. E. O.80, R.11.

- (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

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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

Cf. W.A. O.XVIA, R.12. Cf. E. O.80, R.12.

- (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 shall, 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 Fund.

- (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.

13. Personal service on person under disability

Cf. E. O.80, R.16.

- (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) Where the person to be served is an infant (who is not also a patient) and has no next friend or guardian *ad litem* in the proceedings, the document may be served —
 - (a) if he is aged 16 years or upwards, on him;
 - (b) on one of his parents or his guardian;
 - (c) if he has no parent or guardian, on the person with whom he resides or in whose care he is.
- (4) Where the person to be served is a represented person and has no next friend or guardian *ad litem* in the proceedings, the document may be served —
 - (a) on the person (if any) who is authorised under Part 5 or Part 6 of the Act to conduct the proceedings in the name of the represented person or on his behalf; or
 - (b) on the Public Trustee if the person is a represented person within the meaning of the *Public Trustee Act 1941*; or
 - (c) if subparagraphs (a) or (b) do not apply, on the person with whom the represented person resides or in whose care he is.
- (5) Notwithstanding anything in paragraphs (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 paragraph shall be deemed to be duly served on the person under disability.

- (6) A document served pursuant to any of paragraphs (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 writ of subpoena against any such person, must notwithstanding anything contained in paragraphs (2) to (5), be served personally on him, unless the Court otherwise orders.
- (8) Paragraph (7) does not apply to an order for interrogatories or for discovery or inspection of documents.

*[Rule 13 amended in Gazette 15 June 1973 p.2250;
22 July 1994 p.3748.]*

Order 71

Partners, business names

1. Partners may sue or be sued in the firm name

Cf. W.A. O.XVI, R.24(1). Cf. E. O.81, R.1.

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

Cf. W.A. O.XVI, R.24(2), (3). Cf. E. O.81, R.2.

- (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 paragraphs (1) and (2) shall have effect in relation to that action as they have effect to an action brought by partners in the

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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.

3. Service

Cf. W.A. O.XLVII, R.3.

- (1) Where parties are sued in the name of a firm under Rule 1, the writ may, except in the case mentioned in paragraph (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.

4. Notice of capacity in which person is served

W.A. O.XLVII, R.4.

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

Ib. R.5. Cf. E. O.81, R.4(1).

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

Cf. E. O.81, R.4(5). H.Ct. O.48, R.6.

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 a partner

Cf. W.A. O.XLVII. R.7. Cf. E. O.81, R.4. Cf. Vic. O.48A, R.7.

- (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

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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 paragraph (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.

8. Execution of judgment against a firm

Cf. W.A. O.XLVII, R.8. Cf. E. O.81, R.5. Cf. H.Ct. O.48, R.8.

- (1) Where a judgment is given or an order made against a firm execution to enforce the judgment or order may subject to Rule 9 issue —
- (a) against any property of the partnership within the jurisdiction; and
 - (b) against a person —
 - (i) who has entered an appearance in the action as a partner; or
 - (ii) who has admitted in his pleading that he is a partner; or
 - (iii) who has been adjudged to be a partner; or
 - (iv) who has been served as a partner with the writ and has failed to enter an appearance in the action.

- (2) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ was issued unless he —
- (a) entered an appearance in the action as a partner; or
 - (b) was served as a partner with the writ or with notice of the writ,

and except as provided by paragraph (1)(a) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm does not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

- (3) If the party who has obtained judgment or an order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this Rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person and the Court —
- (a) if the liability is not disputed, may, subject to paragraph (2), give that leave; or
 - (b) if the liability is disputed, may order that the liability of that person be tried and determined in any manner in which an issue or question may be tried and determined.
- (4) An application under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to issue execution.

[Rule 8 amended in Gazette 9 August 1996 p.3951.]

9. Enforcing judgment in action between partners

Cf. W.A. O.XLVII, R.10. Cf. E. O.81, R.6. Cf. H.Ct. O.48, R.10.

- (1) The preceding Rules of this Order apply to actions between a firm and one or more of its members and to actions between

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firms having one or more members in common, if the firm or firms carry on business within the jurisdiction.

- (2) Execution shall not be issued in any action to which paragraph (1) applies without the leave of the Court, and 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.

10. Attachment of debts owing from a firm

Cf. W.A. O.XLVII, R.9. Cf.E. O.81, R.7. Cf. H.Ct. O.48, R.9.

- (1) A debt owing or accruing from a firm carrying on business within the jurisdiction may be attached under section 126 of the Act notwithstanding that one or more members of the firm may be resident out of the jurisdiction, if some person apparently having the control or management of the partnership business, or some member of the firm within the jurisdiction is served with the garnishee order.
- (2) An appearance by a member of the firm pursuant to a garnishee order is a sufficient appearance by the firm.

11. Proceedings begun by originating summons

Cf. E. O.81, R.8.

Rules 2 to 10 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.

12. Application to person using a business name

Cf. W.A. O.XLVII, R.11. Cf. E. O.81, R.9.

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. Charge on partner's interest in partnership

Cf. W.A. O.XLIV, RR.2, 3. Cf. E. O.81, R.10.

- (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*, 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 72

Service of documents

1. When personal service required

Cf. E. O.65, R.1.

- (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) Paragraph (1) shall not affect the power of the Court under any provision of these Rules to dispense with the requirement for personal service.

2. Personal service — how effected

Cf. W.A. O.IX, R.2. Cf. E. O.65, R.2.

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 an office copy.

3. Personal service on body corporate

Cf. E. O.65, R.3. W.A. O.IX, R.8.

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 town clerk, clerk, treasurer, manager, secretary or other similar officer thereof.

4. Substituted service

Cf. E. O.65, R.4. Cf. W.A. O.LXVII, R.6.

- (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 in Gazette 14 May 1976 p.1431;
12 November 1976 p.4277.]*

5. Ordinary service — how effected

Cf. E. O.65, R.5. Cf. W.A. O.LXVII, R.2.

- (1) Service of any document not being a document which by virtue of these Rules is required to be served personally may be effected —
 - (a) by leaving the document at the proper address of the person to be served; or
 - (b) by sending the document by post addressed to the person to be served at his proper address; or
 - (c) in such manner as the Court may direct.
- (2) For the purposes of this Rule, the proper address of any person on whom a document is to be served in accordance with this Rule shall be the address for service of that person, but if at the

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time when service is effected that person has no address for service his proper address for the purposes aforesaid shall be —

- (a) in any case, the business address of the solicitor (if any) who is acting for him in the proceedings in connection with which the service of the document in question is to be effected; or
 - (b) in the case of an individual his usual or last known address; or
 - (c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction; or
 - (d) in the case of a body corporate the registered or principal office of the body.
- (3) Nothing in this Rule shall be taken as prohibiting the personal service of any document or as affecting any Act which provides for the manner in which documents may be served on bodies corporate.

5A. Service at a document exchange

- (1) Where a solicitor representing a party has facilities for the reception of documents in a document exchange, delivery of a document into those facilities shall be deemed to be sufficient delivery to or service on that solicitor.
- (2) Delivery to or service on a solicitor shall be deemed to be effected on the day following the day upon which the document is delivered into the facilities of the document exchange; but where documents are so delivered on a Friday delivery or service shall be deemed to be effected on the following Monday.
- (3) In this Rule, “**document exchange**” means a document exchange for the time being approved by the Chief Justice on the recommendation of the Council of the Law Society of Western Australia.

[Rule 5A inserted in Gazette 20 June 1986 p.2040.]

6. Notices from office of the Court by post

W.A. O.LXVII, R.3.

Notices sent from any office of the Court may be sent by post, and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

7. Affidavit of service

E.O.65, R.8. Cf. W.A. O.XLVII, R.9.

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

E.O.65, R.9.

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 and interpretation

Cf. E. O.76, R.1.

- (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. Issue of writ

Ib. R.2.

- (1) A probate action must be begun by writ issued out of the Central Office.
- (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 lodged in the Court.

3. Service out of the jurisdiction

Ib. R.3.

- (1) Subject to paragraphs (1a) and (2) service out of the jurisdiction of a writ or notice of a writ in a probate action is permissible with the leave of the Court.
- (1a) Notwithstanding paragraph (1) leave of the Court is not required if a writ or notice of a writ in a probate action is served out of the jurisdiction under the *Service and Execution of Process Act 1992* of the Commonwealth.
- (2) Order 10 Rules 3, 4 and 5 apply in relation to an application for the grant of leave under this Rule as they apply to an application for the grant of leave under Rule 1 or 2 of that Order.

[Rule 3 amended in Gazette 1 March 1994 p.788.]

4. Intervention

Cf. W.A. Ib. R.4. O.XII, R.9.

- (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

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an affidavit of testamentary scripts, or other matters as it thinks necessary.

5. Citation to see proceedings

Cf. E. O.76, R.5(1).

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

Ib. R.5(2).

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

Cf. E. O.76, R.6.

An appearance in a probate action must be entered in the Central Office 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.

8. Citation to bring in grant

Cf. E. O.76, R.7.

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.

9. Citations

Cf. E. O.76, R.8(1), (2), (3).

- (1) A citation must be issued out of the Central Office but shall 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 in Gazette 14 December 1979 p.3872.]

10. Service of citations

Cf. E. O.76, R.8(4) et seq.

- (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 applies to an application for leave under paragraph (2) as it applies to an application for leave under Rules 1 or 2 of that Order.

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- (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 6, 9, 10 and 11 apply to a citation issued pursuant to Rule 8 as they apply to notice of a writ.

11. Affidavit of scripts

Cf. E. O.76, R.9(1), (2).

- (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 exhibit to the affidavit any such script which is in his possession or control.
- (2) An affidavit required by this Rule and any testamentary script exhibited thereto 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.

12. Where script in pencil

Cf. E. O.76, R.9(3).

- (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, file a typed facsimile

copy of the script or the page or pages of it containing the part written in pencil showing underlined in red ink the words which appear in pencil in the original.

No inspection by party until his affidavit filed

Ib. R.9(4).

- (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.

13. Default of appearance

Ib. R.10.

- (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 or notice 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 paragraph (3) the plaintiff must file an affidavit proving due service of the writ, notice of writ, and of the citation (if any).
- (5) The Court granting leave under paragraph (3) may order the plaintiff to file an affidavit of testamentary scripts.

14. Counterclaim

Cf. E. O.76, R.12.

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. Party may give notice that he only requires proof in solemn form

Cf. W.A. O.XXI, R.18. Cf. E. O.62, R.6(1)(d).

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

Cf. E. O.76, R.13. Cf. W.A. O.XX, R.8.

- (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.

Cf. W.A. O.XIX, R.26.

- (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;
 - (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

Cf. E. O.76, R.14.

- (1) Order 22 does not apply to a probate action.
- (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.

18. Discontinuance

Cf. E. O.76, R.15.

- (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

Ib. R.16.

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 testamentary papers

Cf. E. O.76, R.19.

- (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 by a Master 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 paragraph (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 in the Registry an affidavit to that effect.

[Rule 20 amended in Gazette 30 November 1984 p.3952.]

21. Applications to the Court

Cf. E. O.76, R.21.

- (1) Except where these Rules otherwise provide and subject to paragraph (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.

22. Administration pending litigation

Cf. E. O.76, R.24.

- (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

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for his remuneration in accordance with section 35 of the said Act.

[Rule 22 amended in Gazette 30 November 1984 p.3952.]

[Order 74 repealed in Gazette 30 October 1992 p.5310.]

Order 75

[Heading inserted in Gazette 15 June 1973 p.2250.]

Proceedings under the *Inheritance (Family and Dependants Provision) Act 1972*

[Heading inserted in Gazette 15 June 1973 p.2250.]

1. Interpretation

In this Order unless the contrary intention appears —

“**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*;

“**Registry**” means the Probate Office of the Supreme Court;

“**the Act**” means the *Inheritance (Family and Dependants Provision) Act 1972*; 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 in Gazette 15 June 1973 p.2250.]

2. Mode of application

- (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 intitled in the matter of the *Inheritance (Family and Dependants Provision) Act 1972*, and in the matter of the will or estate of the deceased person to which the proceedings relate.

[Rule 2 inserted in Gazette 15 June 1973 p.2250.]

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3. Copy of summons to be placed on probate file

- (1) Upon the issue of an originating summons under this Order, the person presenting the summons for sealing must, when filing a copy of the summons as required by Order 58, Rule 14(4), lodge with the Registrar —
 - (a) an additional copy of the summons; and
 - (b) a copy of the will of the testator as admitted to probate or annexed to letters of administration of his estate.
- (2) The Registrar shall cause the additional copy of the summons to be placed on the probate file in the Registry.

[Rule 3 inserted in Gazette 15 June 1973 p.2250.]

4. Summons for directions

- (1) Within 7 days after the time limited for appearance, the plaintiff must apply on summons to the Court for directions.
- (2) Where the plaintiff fails to make the application for directions within the time limited for that purpose, the defendant may apply.

[Rule 4 inserted in Gazette 15 June 1973 p.2250.]

5. Court may make inquiries, etc.

On the hearing of the summons for directions 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 in Gazette 15 June 1973 pp.2250-1.]

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 in Gazette 15 June 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 in Gazette 15 June 1973 p.2251.]

8. Probate etc. to be lodged at Registry

Vide R.35(4) of the Non-contentious Probate Rules 1967.

- (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.

Rules of the Supreme Court 1971

Order 75 Proceedings under the Inheritance (Family and Dependents Provision) Act 1972

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- (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 in Gazette 15 June 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 in Gazette 15 June 1973 p.2251.]

Order 75A

[Heading inserted in Gazette 17 September 1993 p.5055.]

Admission of practitioner under section 22(2) of the Legal Practitioners Act 1893

[Heading inserted in Gazette 17 September 1993 p.5055.]

1. Interpretation

In this Order unless the contrary intention appears —

“**applicant**” means an interstate applicant who seeks to be admitted pursuant to section 22(2) of the *Legal Practitioners Act 1893*;

“**supplementary roll of practitioners**” means the supplementary roll of practitioners held at the Central Office;

“**the Act**” means the *Legal Practitioners Act 1893*.

[Rule 1 inserted in Gazette 17 September 1993 p.5055.]

2. Application to the Full Court

- (1) An application under this Order shall be made to the Full Court ex parte by motion supported by an affidavit —
 - (a) which verifies the dates of publication of the notice of the intention of the applicant to apply for admission required under Rule 53(c) of the *Legal Practice Board Rules 1949*¹⁷; and
 - (b) to which the certificate of fitness of the applicant required under Rule 54 of the *Legal Practice Board Rules 1949*¹⁷ shall be annexed.
- (2) The motion and the supporting affidavit must be filed in the Central Office not less than 3 clear days before the proposed date of admission.

[Rule 2 inserted in Gazette 17 September 1993 p.5055.]

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3. Applicant to attend office of superior court referred to in section 22(2) of the Act

Within 21 days of admission the applicant shall attend the office of a superior court referred to in section 22(2) of the Act —

- (a) take an oath or affirmation in accordance with the form set out in Rule 5; and
- (b) sign the supplementary roll of practitioners,

before the Principal Registrar, a Registrar, a Deputy Registrar or the Prothonotary of that court.

[Rule 3 inserted in Gazette 17 September 1993 p.5055.]

4. Entry on Roll of Practitioners

The name of an applicant admitted under section 22(2) of the Act will be entered on the Roll of Practitioners in the usual order with the indorsement “see supplementary roll of practitioners” beside the name of the practitioner.

[Rule 4 inserted in Gazette 17 September 1993 p.5055.]

5. Oath or affirmation

The oath or affirmation referred to in Rule 3 may be taken in either of the following forms —

OATH

I, [name] of [address] do swear that I will truly and honestly demean myself in the practice of a barrister and solicitor of the Supreme Court of Western Australia according to the best of my knowledge and ability,

So help me God!

AFFIRMATION

I, [name] of [address] do solemnly and sincerely declare and affirm that I will truly and honestly demean myself in the

practice of a barrister and solicitor of the Supreme Court of
Western Australia according to the best of my knowledge and
ability.

[Rule 5 inserted in Gazette 17 September 1993 p.5056.]

Order 76

[Heading inserted in Gazette 18 July 1980 p.2384.]

Applications under the *Public Notaries Act 1979*

[Heading inserted in Gazette 18 July 1980 p.2384.]

1. Interpretation

In this Order, unless the contrary intention appears —

“**the 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 in Gazette 18 July 1980 p.2384.]

2. Application for certificate of fitness

(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 Roll of Practitioners under the *Legal Practitioners Act 1893* and is not, pursuant to an order of the Full Court, under suspension from practice;
- (b) exhibiting a certificate from the Chairman of the Legal Practice Board¹² that the applicant is not, pursuant to an order of the Board, under suspension from practice;
- (c) exhibiting certificates from 2 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;
- (d) setting out details of any professional experience as a 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 in Gazette 18 July 1980 p.2384.]

3. Notice of intention to apply. (See *Public Notaries Act 1979*, 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 Full Court 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 Full Court.

- (3) The notice referred to in paragraphs (1) and (2) shall be in accordance with Form No. 93B.

[Rule 3 inserted in Gazette 18 July 1980 pp.2384-5; amended in Gazette 30 November 1984 p.3954.]

4. Application to Full Court

- (1) An application to the Full Court 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.

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- (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;
 - (b) exhibiting extracts from the newspapers containing the advertisements required by Rule 3; and
 - (c) proving compliance with paragraph (2).
- (4) The applicant shall be present in Court when the application is heard.

[Rule 4 inserted in Gazette 18 July 1980 p.2385.]

5. Form of certificates

- (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 93D with such variations as the circumstances may require.

[Rule 5 inserted in Gazette 18 July 1980 p.2385.]

6. Applications to suspend or strike off Public Notaries

- (1) An application to the Full Court 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 in Gazette 18 July 1980 p.2385.]

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 in Gazette 18 April 1980 p.2385; amended in Gazette 30 November 1984 p.3954.]

[8. Repealed in Gazette 16 July 1999 p.3201.]

Order 77

[Heading inserted in Gazette 13 June 1980 p.1719.]

Taxation appeals

[Heading inserted in Gazette 13 June 1980 p.1719.]

1. Interpretation

In this Order —

“Commissioner”—

- (a) in relation to a transport licence-fee appeal, means the person holding the office of Commissioner of Transport under the *Transport Co-ordination Act 1966*¹⁸; and
- (b) in relation to any other appeal to which this Order applies, means the person holding the office of Commissioner of State Taxation¹⁹ under the *Public Service Act 1978*²⁰;

“death duty appeal” means an appeal under section 58 of the *Death Duty Assessment Act 1973*;

“pay-roll tax appeal” means an appeal under section 33 of the *Pay-roll Tax Assessment Act 1971*;

“stamp duty appeal” means an appeal under section 33 of the *Stamp Act 1921*;

“tobacco licence-fee appeal” means an appeal under section 17 of the *Business Franchise (Tobacco) Act 1975*⁹; and

“transport licence-fee appeal” means an appeal under section 47U of the *Transport Co-ordination Act 1966*¹⁸.

[Rule 1 inserted in Gazette 2 July 1982 pp.2318-19.]

2. Application

Subject to Rule 3(4), this Order applies to —

- (a) death duty appeals;

- (b) pay-roll tax appeals;
- (c) stamp duty appeals;
- (d) tobacco licence-fee appeals; and
- (e) transport licence-fee appeals.

[Rule 2 inserted in Gazette 2 July 1982 p.2319.]

3. Extension of time

- (1) An application for extension of time within which to appeal shall be made by originating summons.
- (2) The originating summons shall be supported by an affidavit setting out the reasons for delay and such other facts as are relevant to the application.
- (3) An appearance to the originating summons is not required.
- (4) This rule does not apply to pay-roll tax appeals.

[Rule 3 inserted in Gazette 13 June 1980 p.1719; amended in Gazette 2 July 1982 p.2319.]

4. Mode of appeal

- (1) A person who is dissatisfied with the decision of the Commissioner on an objection made by him with respect to an assessment may, within such time as is prescribed by paragraph (2), in writing request the Commissioner to treat the objection as an appeal and forward it to the Registrar.
- (2) The following times are prescribed for the purpose of paragraph (1) —
 - (a) in relation to a death duty appeal or a stamp duty appeal — 42 days after service of notice of the decision, or such further time as the Court may allow;
 - (b) in relation to a pay-roll tax appeal — 42 days after service of notice of the decision, or such further time as the Court may allow; and

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- (c) in relation to a tobacco licence-fee appeal or a transport licence-fee appeal — 30 days after service of notice of the decision or such further time as the Commissioner or the Court may allow.

[Rule 4 inserted in Gazette 2 July 1982 p.2319; amended in Gazette 7 February 1992 p.687.]

5. Commissioner to forward notice of objection to the Court

- (1) Where the Commissioner has been requested, pursuant to Rule 4, to forward an objection with respect to an assessment to the Registrar, he shall —
 - (a) forward the notice of the objection to the Registrar within such time, after being requested to do so, as is prescribed by paragraph (2);
 - (b) within 7 days after the date on which he has forwarded the notice of objection, give to the appellant notice in writing that the objection has been forwarded and provide him with photographic copies of such of the documents referred to in Rule 6(1) as were not furnished by the appellant to the Commissioner.
- (2) The following times are prescribed for the purpose of paragraph (1) —
 - (a) in relation to a death duty appeal or a stamp duty appeal — 42 days; and
 - (b) in relation to any other appeal to which this Order applies — 30 days.

[Rule 5 inserted in Gazette 2 July 1982 p.2319.]

6. Certain additional documents to be forwarded

- (1) With the notice of objection the Commissioner shall forward to the Registrar —
 - (a) copy of the assessment (including any amendment of the assessment) to which the objection relates;

- (b) copy of any valuation or calculation relating to the assessment;
 - (c) copy of the notice of the disallowance of the objection;
 - (d) a statement by the Commissioner setting out —
 - (i) the facts on which the assessment is based;
 - (ii) the reasons for the Commissioner's decision on the objection; and
 - (iii) the questions of law and fact which the Commissioner considers will require to be determined on the appeal;
 - (e) the request to forward the objection to the Court; and
 - (f) any other documents in his possession or power that are necessary for the hearing of the appeal.
- (2) Where a dispute arises concerning the documents to be forwarded or as to their genuineness, or as to the correctness of a copy of the documents, the Court may, upon application made by a party to the appeal, make such order as it thinks fit with respect to the dispute.

[Rule 6 inserted in Gazette 13 June 1980 p.1720.]

7. Appellant may make written submissions

- (1) The appellant may, within 30 days after receipt by him of the documents referred to in Rule 5(1)(b) or within such further time as the Court may allow, forward to the Registrar any written submission, statement, valuation or other document that the appellant considers relevant to the appeal.
- (2) The appellant shall, on the day on which he forwards any submissions or other documents under this Rule, serve a copy thereof on the Commissioner.
- (3) The forwarding of submissions or other documents under this Rule does not affect the appellant's obligation to comply with

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any order made pursuant to Rule 8 requiring the filing and serving of written submissions.

[Rule 7 inserted in Gazette 13 June 1980 p.1720; amended in Gazette 26 August 1994 p.4415.]

8. Summons for directions

- (1) Before the appeal is entered for hearing, either party may apply to the court by summons for directions as to the conduct of the appeal, and in particular, regarding the following matters —
 - (a) any question arising under Rule 6(2);
 - (b) where the Act under which the appeal is brought so permits, amendment of the grounds set out in the objection;
 - (c) the filing and serving of written submissions;
 - (d) the filing of a statement of agreed facts or the mode of determining disputed facts;
 - (e) expert evidence, and the manner in which expert or other evidence on the appeal is to be adduced; and
 - (f) whether the appeal shall be heard in Court or in Chambers.
- (2) A direction in relation to paragraph (1)(b) shall be without prejudice to the appellant's right (if any) to apply for leave to amend the grounds set out in the objection at any stage before the determination of the appeal.

[Rule 8 inserted in Gazette 13 June 1980 p.1721.]

9. Written submissions pursuant to order

- (1) Where submissions are ordered under Rule 8, the Commissioner and the appellant shall, within the time limited by the order, prepare and file written submissions.

- (2) The written submissions shall state concisely —
 - (a) the facts and circumstances out of which the appeal arises;
 - (b) the contentions to be made by the party concerned; and
 - (c) the provisions of any statute and any judicial decisions relied on, and the basis and method and details of any calculation or valuation made.
- (3) A party shall, at the time of filing his written submissions, lodge with the Registrar 2 copies of his written submissions.
- (4) A party shall, on the day of filing his written submissions, serve 2 copies thereof on the other party.
- (5) A party may, upon receipt of written submissions by the other party, request of that other party further and better particulars of the submission, or inspection of any document referred to therein, or discovery generally.
- (6) If the party to whom the request is made fails to comply with the request within 14 days, the party by whom the request was made may apply by summons for an order in the terms of the request.
- (7) On the hearing of the summons, the Court shall have the same powers as on a summons for particulars or discovery, as the case may require, pursuant to Orders 20 and 26, and, insofar as the summons may relate to a document referred to in the submissions, as if that document had been discovered pursuant to Order 26.
- (8) The summons shall recite the reason for making the application and no supporting affidavit shall be necessary.
- (9) A copy of the request and any information supplied pursuant thereto or to any order under this Rule shall be filed in the Court at, or as near as may be practicable to, the time of delivery of the information.

[Rule 9 inserted in Gazette 13 June 1980 pp.1721-2.]

10. Entry of appeal for hearing

The appellant shall, within 2 months after the notice of objection and other documents are forwarded to the Registrar, enter the appeal for hearing and give notice thereof to the Commissioner.

[Rule 10 inserted in Gazette 13 June 1980 p.1722.]

11. Evidence

- (1) The Court may determine the appeal on oral evidence or on evidence by affidavit or partly by oral evidence and partly by evidence on affidavit.
- (2) Subject to any direction that may be given regarding expert evidence, the provisions of this Order requiring or permitting submissions, statements or other documents to be served, filed or lodged with the Registrar do not affect the law relating to the admissibility of evidence.

[Rule 11 inserted in Gazette 13 June 1980 p.1722.]

12. Judge may state case to Full Court

The Judge may state a case for the opinion of the Full Court on any question of law; and the Full Court shall have power to decide the question submitted, and may either remit the case to the Judge with a note of the Full Court's decision or, without remitting the case, dispose of the appeal in such manner as shall be just and consistent with that decision.

[Rule 12 inserted in Gazette 13 June 1980 p.1722.]

13. Dismissal for want of prosecution

- (1) Where the appellant does not enter the appeal for hearing as required by Rule 10, the Commissioner may apply to the Court to dismiss it for want of prosecution.

- (2) On the hearing of the application, the Court may order that the appeal be dismissed, or may make such other orders, and upon such terms as the Court deems just.

[Rule 13 inserted in Gazette 13 June 1980 p.1722.]

14. Personal service not required

Personal service is not required of a document required under this Order to be served on any person.

[Rule 14 inserted in Gazette 13 June 1980 p.1722.]

Order 78

Applications under the *Vexatious Proceedings Restriction Act 1930*

1. Mode of application

- (1) An application under the *Vexatious Proceedings Restriction Act 1930*, (in this Order referred to as “**the said Act**”) shall be made —
 - (a) by originating motion if it is intended to be heard in court;
 - (b) by originating summons if it is intended to be heard in chambers.
- (2) A notice of motion may be in Form No. 94.
- (3) An appearance to an originating summons issued under this Rule is not required.

2. Notice to be indorsed on summons

Upon the copy of the originating summons which is served there shall be indorsed a notice to the effect following —

“ You are required to attend before the Judge at the time mentioned herein, and you may lay before him any material evidence which you are able to produce.

In the event of the Judge directing the application to be set down for hearing before the Full Court or a Judge in court, you will be able to ascertain from the Central Office of the Court the date for which it is listed for hearing.

You should serve on the applicant a copy of any affidavit which you intend to use on the hearing.

”.

3. Time for hearing

The interval between the date of service of any notice of motion or originating summons and the date of hearing shall be not less than the time that would be properly limited for appearance in a writ of summons served at the same place.

4. Hearing may proceed if respondent fails to appear

If the party against whom an order is sought fails to attend at the hearing, the Court, after receiving proof of the due service of the notice of motion or summons, may proceed to hear and determine the application in the absence of such party.

5. Service on Attorney General of notice of application for leave not necessary

- (1) It shall not be necessary to serve the Attorney General with the notice of motion or originating summons where the application is for leave to institute legal proceedings, but it shall be sufficient if the person against whom the proceedings are proposed to be instituted has been served with the notice of motion or originating summons.
- (2) The Court may, if it shall think fit, deal with any such application ex parte.

6. Judge may refer application to open court or to Full Court

The Judge before whom any application comes on for hearing in chambers may, instead of hearing and determining the matter himself, order it to be set down for hearing before the next sittings of the Full Court or a Judge in court, and it shall be so set down accordingly.

7. Evidence

- (1) Subject to paragraph (2), evidence on the hearing of any application may be given by affidavit or by witnesses to be called and examined orally.

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- (2) Any evidence to be given on an application by the Attorney General shall be by affidavit, and a copy of any affidavit to be used shall be served with the notice of motion or summons, but the Court hearing the application may at any time allow the Attorney General to adduce additional evidence, either oral or by affidavit, subject to such terms (if any) as may be deemed to be just.

8. Costs

The Court hearing any application under the said Act may make such order as may be just for the payment of costs by any party. The order may direct payment of a fixed sum or of costs to be taxed.

9. Orders to be gazetted by Registrar

All orders made under the provisions of section 3 of the said Act shall be gazetted by the Registrar.

Order 79

Proceedings under the *Juries Act 1957*

1. Interpretation

In this Order —

“**the said Act**” means the *Juries Act 1957*.

2. Application of Order

This Order applies to criminal as well as civil proceedings.

3. Precepts

A precept for a jury pursuant to section 20 of the said Act shall —

- (a) in the case of a precept in respect of any criminal trial or trials, be in Form No. 95;
- (b) in the case of a precept in respect of any civil trial or trials, be in Form No. 96,

with such modifications as the circumstances may require.

4. Summons to juror

The summons required by section 26(5) and by section 31 of the said Act to be issued to jurors named in the panel of jurors shall be in Form No. 97.

5. Summons to show cause, s.56

A summons issued pursuant to section 56 of the said Act, calling on a juror to show cause why execution should not issue for a fine imposed on him for non-attendance at a court, shall be in Form No. 98.

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6. Summons and notice list, s.33

A summons and notice list referred to in section 33 of the said Act shall be in Form No. 98A.

[Rule 6 inserted in Gazette 9 November 1973 p.4162; amended in Gazette 2 July 1982 p.2320.]

Order 80

Applications under the *Escheat (Procedure) Act 1940*

1. Definition

In this Order the *Escheat (Procedure) Act 1940*, is referred to as “**the said Act**”.

2. Mode of application

Vide s.6 of Act No. 45 of 1940.

- (1) Subject to paragraph (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 Crown” and shall be supported by an affidavit of the facts relied on.

[Rule 2 inserted in Gazette 15 June 1973 p.2252.]

3. Notice

Ib. R.3.

The notice referred to in section 5 of the said Act shall be in Form No. 99.

4. Evidence: Judge may direct inquiry

Ib. R.4.

- (1) Upon the hearing of an application for an Order of Escheat, such evidence shall be adduced as the Judge may require.

r. 5

- (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. Affidavit verifying claim to be filed

Ib. R.5.

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

Ib. R.5.

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. Form of Order

Ib. R.6.

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

Ib. R.8.

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

[Heading inserted in Gazette 26 January 1993 p.828.]

Applications under the *Royal Commission (Custody of Records) Act 1992*

[Heading inserted in Gazette 26 January 1993 p.828.]

1. Interpretation

In this Order unless the contrary intention appears —

“**the 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 in Gazette 26 January 1993 p.828.]

2. Applications to Register

- (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) The provisions of Rules 20 and 21 of Order 67 apply to all applications for leave.
- (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.

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- (6) An application under paragraph (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 in Gazette 26 January 1993 p.829.]

3. Form of order

- (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 in Gazette 26 January 1993 p.829.]

Order 81

Arrest in pending actions, and proceedings under the *Debtors Act 1871*²¹

1. Form of order to arrest

Cf. W.A. O.LXIX, R.1.

An order to arrest under section 63(2) of the *Supreme Court Act 1935*, shall be in Form No. 101.

2. Judgment summons not to issue without leave

Ib. R.8.

No summons under section 3 of the *Debtors Act 1871*²¹, shall be issued by the Supreme Court unless the judgment creditor shall first apply for and obtain an order of a Judge under the said section for the issue of such summons.

3. Duration of order of commitment

Cf. W.A. O.XL, R.24.

An order of commitment under section 3 of the *Debtors Act 1871*²¹, shall bear date on the day on which such order was made, and shall continue in force for one year from such date and no longer; but it may be renewed in the manner provided for writs of execution by Order 47 Rule 10.

Order 81A

[Heading inserted in Gazette 7 June 1972 p.1703.]

References under the *Environmental Protection Act 1971* ²²

[Heading inserted in Gazette 7 June 1972 p.1703.]

1. Definition

In this Order the *Environmental Protection Act 1971* ²² is referred to as “**the Act**”.

[Rule 1 inserted in Gazette 7 June 1972 p.1703; amended in Gazette 26 August 1994 p.4415.]

2. Application under section 42 of the Act

- (1) An application under section 42 of the Act to refer a matter to the Court or a Judge for the opinion of the Court shall be made by originating motion returnable in open court.
- (2) The applicant shall be the plaintiff in the proceedings and, subject to any order made under Rule 3, the Environmental Protection Authority established under section 9 of the Act shall be the defendant.

[Rule 2 inserted in Gazette 7 June 1972 p.1703.]

3. Directions to be sought

- (1) When the notice of motion has been filed, the plaintiff shall apply by summons to a Judge in chambers for directions regarding the persons to be served or joined as parties, the representation of persons affected by the proceedings, the time for appearance, the date and mode of hearing, and any other necessary matters.

- (2) The summons shall set out precisely the directions sought.

[Rule 3 inserted in Gazette 7 June 1972 p.1703.]

4. Application of Order 54

Subject to this Order, the provisions of Order 54 shall apply to and in relation to applications of the kind mentioned in Rule 2.

[Rule 4 inserted in Gazette 7 June 1972 p.1703.]

Order 81B

[Heading inserted in Gazette 1 March 1994 p.788.]

Proceedings under the *Service and Execution of Process Act 1992 of the Commonwealth*

[Heading inserted in Gazette 1 March 1994 p.788.]

1. Interpretation

(1) In this Order —

“**court of rendition**”, “**enforcement**” and “**place of rendition**”
have the same respective meanings as in section 104 of the
Act;

“**the Act**” means the *Service and Execution of Process Act 1992*²³ of the Commonwealth.

(2) All applications under the Act must be made pursuant to these Rules.

[Rule 1 inserted in Gazette 1 March 1994 p.788.]

2. Enforcement of judgments under section 105 of the Act

(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 in Gazette 1 March 1994 p.788.]

3. Interest under section 108 of the Act

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 in Gazette 1 March 1994 p.789.]

Order 81C

[Heading inserted in Gazette 2 April 1976 p.1039.]

Applications under sections 76 and 78 of the Road Traffic Act 1974

[Heading inserted in Gazette 2 April 1976 p.1039.]

1. Interpretation

In this Order unless the contrary intention appears —

“**the Act**” means the *Road Traffic Act 1974*;

“**the Board**” means the Traffic Board²⁴ established under section 6 of the Act²⁴ and includes an officer of that Board acting on its behalf.

[Rule 1 inserted in Gazette 2 April 1976 p.1039.]

2. Application by notice of motion

An application under section 76(1) or (7) of the Act or under section 78 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.

[Rule 2 inserted in Gazette 2 April 1976 p.1039.]

3. Return of motion and date of hearing

The motion shall be made returnable in open court at such civil, criminal, or circuit sittings as the Court directs, and shall be heard on such date as is fixed in accordance with this Order and with the practice of the Court by the proper officer.

[Rule 3 inserted in Gazette 2 April 1976 p.1039.]

4. Applications pursuant to ss.76(1), or (7)(a) or 78

In the case of an application under section 76(1) or (7)(a) of the Act or under section 78 of the Act —

- (a) the date fixed for the hearing of the application shall not be less than 21 clear days after the day the notice of motion is filed unless —
 - (i) the Board²⁴ consents, in writing, to the hearing being held within that period and that consent is filed with the notice of motion; or
 - (ii) the Court orders that the hearing be held within that period;
- (b) as soon as practicable after the date for the hearing has been fixed by the proper officer the applicant shall give notice thereof to the Director of Public Prosecutions²⁵ and the Board²⁴;
- (c) there shall be filed with the notice of motion affidavits setting out the facts relied on to support the application, including such an affidavit by the applicant;
- (d) on the day the notice of motion is filed or on the next day thereafter the applicant shall serve a copy of the notice of motion and of each affidavit filed therewith, as required by this Rule, on the Director of Public Prosecutions²⁵ and the Board²⁴, each of whom —
 - (i) shall be entitled to be heard on the application and to file affidavits in answer to those so filed with the notice of motion;
 - (ii) shall, if intending to be heard on the application, file a notice to that effect on which shall be indorsed an address for service in Perth;
 - (iii) shall serve on the applicant a copy of any affidavit or notice of intention to be heard filed under this paragraph on the day it is filed or on the next day thereafter;

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- (e) the applicant shall be present in the Court on the hearing of his application and if so required by the Court shall give oral evidence in support of the application and submit himself to cross-examination, unless his presence is excused by the Court.

[Rule 4 inserted in Gazette 2 April 1976 pp.1039-40.]

5. Applications pursuant to s.76(7)(b)

In the case of an application under section 76(7)(b) of the Act —

- (a) the date fixed for the hearing of the application shall not be less than 21 clear days after the day the notice of motion is filed unless the Court orders that the hearing be held within that period;
- (b) as soon as practicable after the date for the hearing has been fixed by the proper officer the Board²⁴ shall give notice thereof to the holder of the extraordinary licence to which the application relates;
- (c) there shall be filed with the notice of motion affidavits setting out the facts relied on to support the application;
- (d) on the day the notice of motion is filed or on the next day thereafter the Board²⁴ shall serve a copy of the notice of motion and of each affidavit filed therewith, as required by this Rule, on the holder of the extraordinary licence to which the application relates, who —
 - (i) shall be entitled to be heard on the application and to file affidavits in answer to those so filed with the notice of motion;
 - (ii) shall, if he intends to be heard on the application, file a notice to that effect on which notice shall be indorsed an address for service in Perth;
 - (iii) shall serve on the Board²⁴ a copy of any affidavit or notice of intention to be heard filed under this

paragraph, on the day it is so filed or on the next day thereafter.

[Rule 5 inserted in Gazette 2 April 1976 p.1040.]

6. Deponent to be produced for cross-examination

- (1) Subject to paragraph (2), where an affidavit has been filed under this Order, the party on whose behalf the affidavit was filed shall produce the deponent for cross-examination if so required by another party, and if the deponent does not attend for cross-examination the affidavit shall not be used as evidence unless by special leave of the Court.
- (2) In the case of an application referred to in Rule 4, paragraph (1) does not apply to or in relation to an affidavit made by the applicant.

[Rule 6 inserted in Gazette 2 April 1976 p.1040.]

Order 81D

[Heading inserted in Gazette 20 June 1986 p.2041.]

Proceedings under the Commercial Arbitration Act 1985

[Heading inserted in Gazette 20 June 1986 p.2041.]

1. Interpretation

In this Order unless the contrary intention appears —

“**section**” means a section of the Act;

“**the Act**” means the *Commercial Arbitration Act 1985*; and

words defined in section 4 and used in this Order have the same respective meanings as in the Act.

[Rule 1 inserted in Gazette 20 June 1986 p.2041.]

1A. Application

This Order applies with the necessary modifications to —

- (a) an arbitrated decision under section 64 of the *Workplace Agreements Act 1993*; and
- (b) a determination of an arbitrator under Schedule 1 Part 4 clause 31 of the *Gas Pipelines Access (Western Australia) Act 1998*.

[Rule 1A inserted in Gazette 10 March 2000 p.1121.]

2. Title of proceedings

- (1) A motion, affidavit or other document in proceedings in the Court under the Act shall be entitled in accordance with Form No. 105.
- (2) A summons under the Act —
 - (a) where there has been no prior application to the Court in relation to the arbitration, shall be in accordance with Form No. 75;

- (b) where there has been such an application, shall be in accordance with Form No. 77,

and shall also be entitled in accordance with Form No. 105.

[Rule 2 inserted in Gazette 20 June 1986 p.2041.]

3. Matters for a Judge in Court

- (1) An application to the Court —
 - (a) under section 39 to determine a question of law arising in the course of an arbitration;
 - (b) under section 42 to set aside an award;
 - (c) under section 43 to remit a matter referred to arbitration;
or
 - (d) under section 44 to remove an arbitrator or umpire,must be made by originating motion to a Judge in Court.
- (2) An appeal to the Court under section 38(2) must be by originating motion to a Judge in Court.
- (3) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to an award on the ground that it was made without jurisdiction may be made by originating motion to a Judge in Court; but this paragraph does not affect the Judge's power to decline to make such a declaration in proceedings begun by motion.
- (4) An application of the kind mentioned in paragraph (1) must be served on the arbitrator or umpire as well as on the other parties to the arbitration; and a date of hearing shall be fixed by the proper officer in accordance with the practice of the Court or by an order made on a summons issued under Rule 10(4).

[Rule 3 inserted in Gazette 20 June 1986 p.2041.]

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4. Time for applications to determine preliminary points of law

An application to the Court for a determination under section 39(1) must be commenced within 21 days after the day on which the consent or all the consents in writing was or were given to the party who wishes to apply to the Court under that subsection, or within such extended time as the Court may allow.

[Rule 4 inserted in Gazette 20 June 1986 p.2041.]

5. Time for other applications and for appeals

(1) In this Rule “**material date**” means —

- (a) in relation to an award which, by agreement by the parties to the arbitration agreement, may be made with reasons later — the day on which notice of the reasons is given by the arbitrator to the person who wishes to apply or appeal to the Court;
- (b) in relation to any other award — the day on which notice of the award is given by the arbitrator to the person who wishes to apply or appeal to the Court.

(2) An application to the Court —

- (a) under section 38(4)(b) for leave to appeal;
- (b) under section 42 to set aside an award; or
- (c) under section 43 to remit a matter referred to arbitration,

must be made within 21 days after the material date, or within such extended time as the Court may allow.

(3) An appeal under section 38(2) must be instituted —

- (a) where the appeal is brought with the consent of the other parties to the arbitration agreement, within 21 days from the day on which the consent is given;

- (b) where the appeal is brought with the leave of the Court, within 21 days after the day on which leave is given,

or within such extended time as the Court may allow.

[Rule 5 inserted in Gazette 20 June 1986 pp.2041-2.]

6. Interlocutory orders

- (1) A party who seeks an interlocutory order under section 47 in relation to arbitration proceedings must issue a summons for directions which must be served on the arbitrator or umpire and on the other parties to those proceedings.
- (2) The summons must be supported by an affidavit setting out the relevant facts; and a minute of the orders and directions sought must be filed and a copy of it served with the summons.

[Rule 6 inserted in Gazette 20 June 1986 p.2042.]

7. Subpoenas

Rules 12 to 19, inclusive, of Order 36 apply in relation to the issue of a subpoena under section 17(1) of the Act as they apply to the issue of a subpoena in proceedings in the Court.

[Rule 7 inserted in Gazette 20 June 1986 p.2042.]

8. Orders for examination of witnesses

Order 38 applies to an arbitration as it applies to proceedings in the Court.

[Rule 8 inserted in Gazette 20 June 1986 p.2042.]

9. Custody of records and exhibits

- (1) Subject to this Rule, to any order of the Court, and to any agreement between the parties to the arbitration, an arbitrator or umpire must, for a period of not less than 42 days after the award is made, retain all notes of evidence, transcripts, tapes,

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exhibits and other documents and things in his possession relating to the arbitration.

- (2) When requested by the Court or a Registrar so to do, the arbitrator or umpire shall forthwith forward to the Registrar the documents and other things mentioned in paragraph (1), or such of them as are specified in the request.
- (3) An arbitrator or umpire may in his discretion, and after having given notice in writing to the other parties to the arbitration, permit a party, on such conditions as the arbitrator or umpire thinks fit, to uplift any of the documents or things mentioned in paragraph (1).
- (4) The arbitrator or umpire or any party to the arbitration may apply to the Court for directions regarding any matter to which this Rule applies.

[Rule 9 inserted in Gazette 20 June 1986 p.2042.]

10. Appeals and applications for leave to appeal

- (1) A notice of motion by way of appeal must state —
 - (a) the award from which the appeal is brought;
 - (b) whether the appeal is from the whole or part only of the award and if so, what part of the award;
 - (c) the question of law arising out of the award;
 - (d) concisely the grounds of the appeal; and
 - (e) whether the appeal is brought with the consent of the other parties to the arbitration agreement or with the leave of the Court.
- (2) On the hearing of the appeal, the appellant shall be limited to the grounds stated in the notice of motion unless the Court allows an amendment to the notice.
- (3) Subject to section 40, the notice of motion may be amended by leave of the Court at the hearing or by leave of a Judge or

Master prior to the hearing, and on such terms as the Court, Judge or Master thinks fit.

- (4) Within 21 days after the filing of a motion by way of appeal, or a motion for leave to appeal, or within such extended time as the Court may allow, the appellant or applicant must issue a summons for directions and serve it on the other parties to the arbitration agreement and on the arbitrator or umpire.
- (5) The summons must be supported by an affidavit —
 - (a) stating —
 - (i) the nature of the case;
 - (ii) the questions involved; and
 - (iii) where leave to appeal is sought, the reasons why leave should be given and the proposed grounds of appeal;
 - (b) exhibiting the relevant documents, or such of them as are in the possession of the appellant or applicant.
- (6) The summons must seek directions in relation to —
 - (a) the documents and other things to be forwarded to the Registrar under Rule 9;
 - (b) any proposed amendments to the grounds of appeal;
 - (c) the filing and serving of written submissions;
 - (d) the filing of a statement of agreed facts;
 - (e) the documents to be included in the papers for the Judge or Master hearing the appeal or application;
 - (f) the date of hearing of the appeal or application; and
 - (g) any other relevant matter.
- (7) A minute of the orders and directions sought must be filed and a copy of it served with the summons.

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- (8) If a summons is not issued and served within the time limited by paragraph (4), the appeal or application shall, unless the Court shall otherwise order, lapse and be deemed to have been abandoned.

[Rule 10 inserted in Gazette 20 June 1986 pp.2042-3.]

11. Enforcement of arbitration awards

- (1) An application under sections 33 or 58 to enforce an award made under an arbitration agreement in the same manner as a judgment or order must be made by summons.
- (2) The summons must be supported by an affidavit —
- (a) where the application is under section 33 —
 - (i) exhibiting the original agreement or a copy thereof, or stating the effect of its material terms; and
 - (ii) exhibiting the original award or a copy thereof;
 - or
 - (b) where the application is under section 58, exhibiting the documents required to be produced by section 59; and, in either case —
 - (c) stating the name and the usual or last known place of abode or business of the applicant and of the person against whom it is sought to enforce the award; and
 - (d) stating, as the case may require, either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

[Rule 11 inserted in Gazette 20 June 1986 p.2043.]

12. Payment into and out of court

- (1) A party to an arbitration agreement may at any time pay into court a sum of money in satisfaction of a claim to which the agreement applies.

- (2) A person who has paid money into court under paragraph (1) may, without leave, make one further payment increasing the sum paid in by him.
- (3) A person who makes any payment into court under this Rule must give notice of the payment to the other parties to the arbitration agreement in Form No. 106 and shall state in the notice whether liability is admitted or denied; and each party receiving the notice must, within 3 days, send to the party who gave the notice a written acknowledgment of its receipt.

[Rule 12 inserted in Gazette 20 June 1986 pp.2043-4.]

13. Acceptance of money paid into court

- (1) Where money is paid into court under Rule 12(1), the party for the satisfaction of whose claim the money has been paid in (in this Rule referred to as “**the claimant**”) may, within 14 days after receipt of the notice of payment or, where more than one payment has been made, within 14 days after receipt of the notice of the last payment, accept the whole sum in satisfaction of the claim by giving to the party who paid the money into court and to the Registrar notice in Form No. 107 signed by the claimant; and thereupon, subject to compliance with paragraph (2), the claimant shall be entitled to receive payment of the accepted sum in satisfaction of his claim.
- (2) Where the parties consent, or the Registrar is satisfied by affidavit that money paid into court has been duly accepted under paragraph (1), payment of that money shall be made to the claimant or, on his written authority, to his solicitor.
- (3) If the claimant accepts a payment into court in satisfaction of his claim he may, after 4 days from payment out and unless the arbitrator or umpire otherwise directs, tax in the Court his costs incurred to the time of payment into court and no earlier than 48 hours after taxation may, by leave of the Court, sign judgment for his taxed costs.

[Rule 13 inserted in Gazette 20 June 1986 p.2044.]

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14. Money remaining in court

If any money paid into court is not accepted in accordance with Rule 13, the money remaining in court shall not be paid out except in pursuance of a certificate of the arbitrator or umpire or an order of the Court.

[Rule 14 inserted in Gazette 20 June 1986 p.2044.]

15. Non-disclosure of payment into court

No statement of the fact that money has been paid into court under Rule 12 shall be inserted in any pleadings in the arbitration, and no communication of that fact shall, on the hearing of the arbitration, be made to the arbitrator or umpire until all questions of liability and amount of debt or damages have been decided.

[Rule 15 inserted in Gazette 20 June 1986 p.2044.]

16. Taxation of costs

- (1) The provisions of Order 66 shall, with such modifications as are necessary, apply in relation to proceedings in the Court for taxation of the costs of an arbitration including the fees and expenses of an arbitrator or umpire.
- (2) A party entitled to require the costs of an arbitration to be taxed must, when obtaining an appointment to tax, leave with the taxing officer the original or a copy of the award unless he has previously filed the original in the Central Office, together with such further documents as may be necessary to enable the bill of costs to be taxed.

[Rule 16 inserted in Gazette 20 June 1986 p.2044.]

Order 81E

[Heading inserted in Gazette 1 July 1988 p.2140.]

Cross-vesting

[Heading inserted in Gazette 1 July 1988 p.2140.]

1. Interpretation

In this Order, unless the contrary intention appears —

“**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;

“**the Act**” means the *Jurisdiction of Courts (Cross-vesting) Act 1987* of Western Australia.

[Rule 1 inserted in Gazette 1 July 1988 p.2140.]

2. Application of this Order

This Order applies to proceedings to which cross-vesting laws apply.

[Rule 2 inserted in Gazette 1 July 1988 p.2140.]

3. Commencement of proceedings

- (1) Subject to paragraph (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.

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- (3) An application under paragraph (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 paragraph (4) does not invalidate the process.
- (6) Where a party has not complied with paragraph (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 in Gazette 1 July 1988 p.2141.]

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 in Gazette 1 July 1988 p.2141.]

[5. Repealed in Gazette 26 August 1994 p.4413.]

6. Directions

- (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 in Gazette 1 July 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 in Gazette 1 July 1988 p.2141.]

8. Applications to be dealt with by a Judge

An application for the transfer or removal of a proceeding under cross-vesting laws must be determined by a Judge.

[Rule 8 inserted in Gazette 1 July 1988 p.2142.]

9. Transfer on Attorney General's application

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 in Gazette 1 July 1988 p.2142.]

10. Transfer to Court when no proceeding pending

- (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 paragraph (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 in Gazette 1 July 1988 p.2142.]

11. Conduct of proceedings

- (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 subparagraph (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 in Gazette 1 July 1988 p.2142.]

Order 81F

[Heading inserted in Gazette 17 September 1993 p.5056.]

Confiscation of profits of crime

[Heading inserted in Gazette 17 September 1993 p.5056.]

Part 1 — Preliminary

[Heading inserted in Gazette 17 September 1993 p.5056.]

1. Interpretation

In this Order unless the contrary intention appears “**the Act**” means the *Crimes (Confiscation of Profits) Act 1988* 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 in Gazette 17 September 1993 p.5056.]

2. Application of this Order

- (1) An application under the Act shall be made under this Order, unless the application is made —
 - (a) following the conviction of a person; and
 - (b) to the Judge with the obligation to sentence the person for that conviction.
- (2) Whenever this Order requires that an application, or a pending proceeding, under the Act shall be made by an originating summons, the method by which notice is given, for the purposes of the Act, is by service of the summons, together with a copy of the affidavit referred to in Rule 3, on the relevant person.
- (3) This Order applies, with any necessary modification, to applications under the *Proceeds of Crime Act 1987* of the Commonwealth.

[Rule 2 inserted in Gazette 17 September 1993 p.5056.]

3. Affidavits in support

- (1) Unless the Court otherwise orders, every application required under this Order for an order under the Act, which is to be made by originating summons or ordinary summons, shall be filed and served on the relevant person, together with an affidavit setting forth the facts and circumstances upon which the application is based.
- (2) These provisions do not apply to applications made under section 20 of the Act.

[Rule 3 inserted in Gazette 17 September 1993 p.5056.]

4. Summons for directions

- (1) Whenever an application is required by this Order to be commenced by originating summons in Form 74 the plaintiff must apply on summons to the Court for directions within 7 days after the time limited for appearance.
- (2) Where the plaintiff fails to comply with paragraph (1) a defendant may apply.

[Rule 4 inserted in Gazette 17 September 1993 p.5057.]

5. Powers of the Court as to directions

On the hearing of any summons for directions, or upon any other application, or of its own motion at any time, the Court may —

- (a) inquire as to the persons who may be affected by the relief which the plaintiff seeks and for the purpose of that inquiry direct the plaintiff and defendant 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;

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- (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 application.

[Rule 5 inserted in Gazette 17 September 1993 p.5057.]

6. 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 —

- (a) that defendant be authorised to defend the proceedings on behalf of or for the benefit of all persons so interested (including an unborn person); and
- (b) all persons so interested shall be bound by any order made in the proceedings.

[Rule 6 inserted in Gazette 17 September 1993 p.5057.]

Part 2 — Applications to be brought by originating summons with appearance

[Heading inserted in Gazette 17 September 1993 p.5057.]

7. Procedure for application for confiscation orders

- (1) An application for a confiscation order under the Act shall be commenced by originating summons in Form 74.
- (2) The appropriate officer shall be the plaintiff and the person charged with or convicted of a serious offence and, in the case of an application for a forfeiture order the other persons referred to in section 7(1)(a) of the Act shall be the defendants.

[Rule 7 inserted in Gazette 17 September 1993 p.5057.]

8. Restraining orders on notice

- (1) An application for a restraining order under the Act (unless made in pending proceedings) shall be commenced by originating summons in Form 74.
- (2) The appropriate officer shall be the plaintiff and the person convicted of or charged or about to be charged with a serious offence and the other persons referred to in section 20(3) of the Act shall be the defendants.
- (3) An application for a restraining order in pending proceeding shall be by summons.
- (4) Where the applicant has reason to believe that a person may have an interest in the property in respect of which the applicant seeks a restraining order and that person is not a party to the pending proceedings, the applicant shall apply for directions with respect to —
 - (a) giving notice to that person; or
 - (b) adding that person as a defendant.

[Rule 8 inserted in Gazette 17 September 1993 pp.5057-8.]

9. Restraining orders ex parte

- (1) In an urgent case an application for a restraining order may be made upon notice of motion ex parte.
- (2) If a restraining order is made ex parte in respect of the property of a person the applicant must forthwith serve notice in writing of the substance of the order upon the person and promptly thereafter serve upon the person a sealed copy of the order.

[Rule 9 inserted in Gazette 17 September 1993 p.5058.]

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Part 3 — Applications to be brought by originating summons without appearance

[Heading inserted in Gazette 17 September 1993 p.5058.]

10. Return of seized property

- (1) An application for the return of or access to property under section 35(5) of the Act shall be commenced by originating summons in Form 75.
- (2) The applicant shall be the plaintiff and the Commissioner of Police shall be the defendant.

[Rule 10 inserted in Gazette 17 September 1993 p.5058.]

11. Variation of production order

- (1) An application to vary a production order under section 38 of the Act shall be commenced by originating summons in Form 75.
- (2) The applicant shall be the plaintiff and the police officer who obtained the order shall be the defendant.

[Rule 11 inserted in Gazette 17 September 1993 p.5058.]

12. Applications to cancel interstate registration

An application to cancel the registration of an interstate restraining order may be made —

- (a) upon the filing of a written consent to its cancellation signed by the person on whose application the order was made or by an appropriate officer; or
- (b) by originating summons in Form 75 in which the person seeking the cancellation shall be the plaintiff and the person on whose application the order was made shall be the defendant.

[Rule 12 inserted in Gazette 17 September 1993 p.5058.]

Part 4 — Applications to be brought by summons

[Heading inserted in Gazette 17 September 1993 p.5058.]

13. Further orders in relation to restraining orders

- (1) A person who could have applied for a restraining order, but did not, and who seeks further orders in relation to the restraining order under section 22(1) or section 23(3) of the Act may not apply for further orders until he or she has been joined as a party to the proceedings.
- (2) An application under section 22(1) or section 23(3) of the Act shall be by summons.
- (3) If any person referred to in section 22(2)(b) to (d) or section 23(5) of the Act is not a party to the proceedings, the applicant shall 7 days before the return day of the summons personally serve upon each person written notice that he or she has made the application, together with a copy of the summons.
- (4) If the summons is brought pursuant to section 23(3) of the Act the notice shall inform the person that he or she is entitled to appear and give evidence at the hearing of the summons.

[Rule 13 inserted in Gazette 17 September 1993 pp.5058-9.]

14. Rehearing

- (1) A person may not apply to set aside a confiscation order under section 19 of the Act until he or she has been joined as a party to the proceedings in which the confiscation order was made.
- (2) The application to set aside shall be made by the applicant by summons.
- (3) Notice shall be given to the Attorney General by serving a copy of the summons in support upon the Director of Public Prosecutions within 7 days of issue.

*[Rule 14 inserted in Gazette 17 September 1993 p.5059;
amended in Gazette 1 March 1994 p.789.]*

15. Applications to discharge forfeiture orders

- (1) An application under section 12(1) of the Act shall be made by summons in the proceedings which resulted in the making of the forfeiture order and the Attorney General shall be named as a defendant in the title of the summons and all other proceedings in or related to the application.
- (2) Service is effected on the Attorney General by serving the summons on the Director of Public Prosecutions.

*[Rule 15 inserted in Gazette 17 September 1993 p.5059;
amended in Gazette 1 March 1994 p.789.]*

16. Declarations of value

- (1) An application under section 14(1)(b) of the Act shall be made by summons in the proceedings which resulted in the making of the forfeiture order.
- (2) Service is effected on the Attorney General by serving the summons on the Director of Public Prosecutions.

*[Rule 16 inserted in Gazette 17 September 1993 p.5059;
amended in Gazette 1 March 1994 p.789.]*

[17. Repealed in Gazette 1 March 1994 p.789.]

Part 5 — Miscellaneous

[Heading inserted in Gazette 17 September 1993 p.5060.]

18. Register of interstate restraining orders

- (1) A register to be called “The Register of Interstate Restraining Orders” shall be kept in the Central Office.
- (2) A person desiring to register an interstate restraining order shall file a copy thereof sealed by the seal of the court which made the order.

- (3) Upon the filing of the sealed copy of the interstate restraining order the proper officer shall assign a number to it, enter the particulars in the register and indorse the order with the words “registered on the 20”.
- (4) Upon the making of an order cancelling the registration of an interstate order under section 49(1) of the Act the cancellation shall be entered in the Register.

[Rule 18 inserted in Gazette 17 September 1993 p.5060.]

19. Discharge of registered pecuniary penalty order

Upon the discharge of a pecuniary penalty order which has been registered under the *Service and Execution of Process Act 1901* of the Commonwealth²⁶, the party who caused the order to be registered shall forthwith —

- (a) give written notice stating —
 - (i) that the order has been discharged; and
 - (ii) the date of the order of discharge; and
- (b) forward a sealed copy of the order of discharge,

to the Registrar or other proper officer of every court in which the order was registered.

[Rule 19 inserted in Gazette 17 September 1993 p.5060.]

20. Facsimile copies of interstate orders

For the purposes of section 52 of the Act a facsimile copy shall be certified by the Registrar or other proper officer of the court which made the order that it is a true copy of a sealed copy of that order.

[Rule 20 inserted in Gazette 17 September 1993 p.5060.]

21. Examination before Supreme Court

The officer of the Supreme Court for the purposes of section 22(4)(c) of the Act is a Registrar.

[Rule 21 inserted in Gazette 17 September 1993 p.5060.]

Order 81G — Corporations Rules

[Heading inserted in Gazette 8 May 2000 p.2162.]

Part 1 — Preliminary

[Heading inserted in Gazette 8 May 2000 p.2162.]

1. Application of this Order and other rules of Court

- (1) Unless the Court otherwise orders, this Order applies to a proceeding in the Court under the Corporations Law, or the ASIC Law, that is commenced on or after the day on which the *Supreme Court Amendment Rules (No. 2) 2000* came into operation.
- (2) The other Rules apply, so far as they are relevant and not inconsistent with this Order, to a proceeding in the Court under the Corporations Law, or the ASIC Law, that is commenced on or after the day on which the *Supreme Court Amendment Rules (No. 2) 2000* came into operation.
- (3) Unless the Court otherwise orders, the rules applying to a proceeding in the Court under the Corporations Law, or the ASIC Law, as in force immediately before the commencement of this Order, continue to apply to a proceeding under the Corporations Law, or the ASIC Law, that was commenced before the day on which the *Supreme Court Amendment Rules (No. 2) 2000* came into operation ¹.

[Rule 1 inserted in Gazette 8 May 2000 p.2162.]

2. Expressions used in the Corporations Law

Unless the contrary intention appears, an expression used in this Order and in the Corporations Law has the same meaning in this Order as it has in the Corporations Law.

[Rule 2 inserted in Gazette 8 May 2000 pp.2162-3.]

3. Interpretation

In this Order, unless the contrary intention appears —

“applicant” means a person claiming interlocutory relief in a proceeding;

“defendant” means a person against whom relief (except interlocutory relief) is claimed under the Law or the ASIC Law, whether in the originating process or not;

“interlocutory process” means an interlocutory process in accordance with Form 3;

“originating process” means an originating process in accordance with Form 2;

“plaintiff” means a person claiming relief (except interlocutory relief) under the Law or the ASIC Law, whether in the originating process or not;

“respondent” means a person against whom interlocutory relief is claimed in a proceeding;

“the Law” means the Corporations Law.

[Rule 3 inserted in Gazette 8 May 2000 p.2163.]

4. References to rules and forms

In this Order, unless the contrary intention appears —

(a) a reference to a rule is a reference to a rule in this Order; and

(b) a reference to a form followed by a number is a reference to the form so numbered in Part 1 of the Seventh Schedule.

[Rule 4 inserted in Gazette 8 May 2000 p.2163.]

5. Substantial compliance with forms

- (1) It is sufficient compliance with this Order in relation to a document that is required to be in accordance with a form in Part 1 of the Seventh Schedule if the document is substantially

in accordance with the form required or has only such variations as the nature of the case requires.

- (2) Without limiting subrule (1), the Principal Registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in this Order.

[Rule 5 inserted in Gazette 8 May 2000 pp.2163-4.]

6. Court's power to give directions

The Court may give directions in relation to the practice and procedure to be followed in a proceeding if it is satisfied, in the circumstances of the proceeding, that —

- (a) the provisions of the Corporations Law, the ASIC Law, or the rules of this Court do not adequately provide for the practice and procedure to be followed in the proceeding; or
- (b) a difficulty arises, or doubt exists, in relation to the practice and procedure to be followed in the proceeding.

[Rule 6 inserted in Gazette 8 May 2000 p.2164.]

7. Calculation of time

- (1) If, for any purpose, this Order —

- (a) prohibits, permits or requires an act or thing to be done within, by, or before the end of; or
- (b) otherwise prescribes, allows or provides for,

a period of time before or after a particular day, act or event, the period is to be calculated without counting that day, or the day of the act or event, as the case may be.

- (2) Without limiting subrule (1), in calculating how many days a particular day, act or event is before or after another day, act or event, only the first day, or the day of the first act or event, is to be counted.

- (3) If the last day of any period prescribed or allowed by this Order for an act or thing to be done falls on a day that is not a business day in the place where the act or thing is to be or may be done, the act or thing may be done on the first business day in the place after that day.
- (4) In calculating a period of time for the purposes of this Order, the period beginning on 25 December in a year and ending at the end of 1 January in the next year is not to be counted.

[Rule 7 inserted in Gazette 8 May 2000 pp.2164-5.]

8. Extension and abridgement of time

Unless the Corporations Law, the ASIC Law, or this Order otherwise provide, the rules of this Court that provide for the extension or abridgement of a period of time fixed for the doing of any act or thing in relation to a proceeding apply to a proceeding to which this Order applies.

[Rule 8 inserted in Gazette 8 May 2000 p.2165.]

Part 2 — Proceedings Generally

[Heading inserted in Gazette 8 May 2000 p.2165.]

9. Title of documents in a proceeding — Form 1

The title of a document filed in a proceeding must be in accordance with Form 1.

[Rule 9 inserted in Gazette 8 May 2000 p.2165.]

10. Originating process and interlocutory process — Forms 2 and 3

- (1) Unless this Order otherwise provides, a person must make an application required or permitted by the Law to be made to the Court —
 - (a) if the application is not made in a proceeding already commenced in the Court — by filing an originating process; and

- (b) in any other case — by filing an interlocutory process.
- (2) Unless the Court otherwise directs, a person may make an application to the Court in relation to a proceeding in respect of which final relief has been granted by filing an interlocutory process in that proceeding.
- (3) An originating process must —
 - (a) be in accordance with Form 2; and
 - (b) state —
 - (i) each section of the Law or the ASIC Law, or each regulation of the Corporations Regulations, under which the proceeding is brought; and
 - (ii) the relief sought.
- (4) An interlocutory process must —
 - (a) be in accordance with Form 3; and
 - (b) state —
 - (i) if appropriate, each section of the Law or the ASIC Law, or each regulation of the Corporations Regulations, or each rule of Court under which the interlocutory application is made; and
 - (ii) the relief sought.

[Rule 10 inserted in Gazette 8 May 2000 pp.2165-6.]

11. Fixing of hearing

On receiving an originating process or interlocutory process, the Principal Registrar —

- (a) must fix a time, date and place for hearing and indorse those details on the originating process or interlocutory process; and
- (b) may seal a sufficient number of copies for service and proof of service.

[Rule 11 inserted in Gazette 8 May 2000 p.2166.]

12. Supporting affidavits

- (1) Unless the Court otherwise directs, an originating process, or interlocutory process, must be supported by an affidavit stating the facts in support of the process.
- (2) An affidavit in support of an originating process must annex a record of a search of the records maintained by the Commission, in relation to the company that is the subject of the application to which the originating process relates, carried out no earlier than 7 days before the originating process is filed.

[Rule 12 inserted in Gazette 8 May 2000 p.2167.]

13. Affidavits made by creditors

Subject to Rule 33, an affidavit that is to be made by a creditor may be made —

- (a) if the creditor is a corporation — by a director, secretary, or other principal officer of the corporation, or by a person employed by the corporation who is authorised to make the affidavit on its behalf;
- (b) if the creditor is a company to which a liquidator, provisional liquidator, receiver, administrator or controller has been appointed — by that person; or
- (c) in any other case — by the creditor or a person authorised by the creditor to make the affidavit on behalf of the creditor.

[Rule 13 inserted in Gazette 8 May 2000 p.2167.]

14. Form of affidavits

An affidavit must be in a form that complies with —

- (a) the rules of Court;
- (b) the rules of the Supreme Court of the State (if any) or Territory (if any) where the affidavit was sworn or affirmed; or

(c) the rules of the Federal Court of Australia.

[Rule 14 inserted in Gazette 8 May 2000 p.2167.]

15. Service of originating process or interlocutory process and supporting affidavit

- (1) As soon as practicable after filing an originating process and, in any case, at least 5 days before the date fixed for hearing, the plaintiff must serve a copy of the originating process and any supporting affidavit on —
 - (a) each defendant (if any) to the proceeding; and
 - (b) if the corporation to which the proceeding relates is not a party to the proceeding — the corporation.
- (2) As soon as practicable after filing an interlocutory process and, in any case, at least 3 days before the date fixed for hearing, the applicant must serve a copy of the interlocutory process and any supporting affidavit on —
 - (a) each respondent (if any) to the interlocutory application; and
 - (b) if the corporation to which the interlocutory application relates is not a party to the interlocutory application — the corporation.

[Rule 15 inserted in Gazette 8 May 2000 p.2168.]

16. Notice of certain applications to be given to Commission

- (1) This Rule has effect in addition to the requirements of the Law that, in relation to a proceeding, particular documents are to be served on the Commission or notice of particular matters is to be given to the Commission.
- (2) This Rule does not apply to a person making an application if the person is the Commission or a person authorised by the Commission.

- (3) Unless the Court otherwise orders, if a person makes an application under a provision of the Law mentioned in column 1 of the Table to this subrule, the person must serve on the Commission, a reasonable time before the hearing of the application, a copy of the originating process, or interlocutory process, and supporting affidavit in respect of the application.

Table

Column 1 Provision	Column 2 Description of application
Section 254E(1)	To validate an issue of shares or confirm its terms
Section 266(4)	To extend the time for registration of a charge
Section 445G(1), (2) and (3)	To avoid or validate a deed of company arrangement
Section 449B	To remove an administrator
Section 473(2) and (3)	To fix the remuneration of a provisional liquidator or liquidator
Section 480	For the release of a liquidator of a company and the deregistration of the company
Section 482(1)	For the stay of a compulsory winding-up
Section 509(6)	For the deregistration of a company
Section 511(1)(b)	If the application is for the exercise of the power that would be exercisable under subsection 482(1) of the Law if a company were being wound up by the Court — for a stay of the voluntary winding-up
Section 532(2)	For leave to be appointed or act as a liquidator
Section 536(1)	For an inquiry into the conduct of a liquidator
Section 598	In respect of fraud, negligence, etc. by a person concerned with a corporation
Section 601AH(2)	To reinstate the registration of a company

Column 1 Provision	Column 2 Description of application
Section 601CC(8)	To restore the name of an Australian body to the register
Section 601CL(9)	To restore the name of a foreign company to the register
Section 1224(1) and (4)	To restrain dealings with a futures broker's bank accounts
Section 1226	For a further order or directions following an order made under section 1224 of the Law
Section 1317JA(2), (4) and (5)	For relief from liability for contravention of a civil penalty provision
Section 1318(2)	For relief from liability for negligence, default or breach of trust or duty
Section 1322(4)	To overcome any irregularity in a proceeding

[Rule 16 inserted in Gazette 8 May 2000 pp.2168-70.]

17. Notice of appearance (s. 465C of the Law) — Form 4

- (1) A person who intends to appear before the Court at the hearing of an application must, before appearing —
 - (a) file —
 - (i) a notice of appearance in accordance with Form 4; and
 - (ii) if appropriate — an affidavit stating any facts on which the person intends to rely;
 - and
 - (b) serve on the plaintiff a copy of the notice of appearance and any affidavit not later than —
 - (i) if the person is named in an originating process — 3 days before the date fixed for hearing; or

- (ii) if the person is named in an interlocutory process — 1 day before the date fixed for hearing.
- (2) If the person intends to appear before the Court to oppose an application for winding-up, the person may include in the notice of appearance the notice of the grounds on which the person opposes the application required by section 465C of the Law.
- (3) The period prescribed for filing and serving the notice and affidavit required by section 465C of the Law is the period mentioned in subparagraph (1)(b)(i).

[Rule 17 inserted in Gazette 8 May 2000 pp.2170-1.]

18. Intervention in proceeding by Commission (s. 1330 of the Law) — Form 5

- (1) If the Commission intends to intervene in a proceeding, the Commission must file a notice of intervention in accordance with Form 5.
- (2) Not later than 3 days before the date fixed for the hearing at which the Commission intends to appear in the proceeding, the Commission must serve a copy of the notice, and any affidavit on which it intends to rely, on the plaintiff and on any other party to the proceeding.

[Rule 18 inserted in Gazette 8 May 2000 p.2171.]

19. Publication of notices

If a Rule requires a notice in relation to a body to be published in accordance with this Rule, the notice must be published once in a daily newspaper circulating generally in the State or Territory where the body has its principal, or last known, place of business.

[Rule 19 inserted in Gazette 8 May 2000 p.2172.]

20. Proof of publication

- (1) This Rule applies in relation to any matter published in connection with a proceeding.
- (2) Unless this Order otherwise provides, or the Court otherwise orders, the person responsible for the publication of the matter, or the person's legal practitioner, must file —
 - (a) an affidavit made by the person, or the person's legal practitioner, that states the date of publication and to which is annexed or exhibited a copy of the published matter; or
 - (b) a memorandum signed by the person, or the person's legal practitioner, that states the date of publication and refers to and annexes a copy of the published matter.
- (3) The affidavit or memorandum is prima facie evidence that the publication took place on the date and otherwise as stated in the affidavit or memorandum.

[Rule 20 inserted in Gazette 8 May 2000 p.2172.]

21. Leave to creditor, contributory or officer to be heard

- (1) The Court may grant leave to any person who is, or who claims to be —
 - (a) a creditor, contributory or officer of a corporation; or
 - (b) an officer of a creditor, or contributory, of a corporation,to be heard in a proceeding without becoming a party to the proceeding.
- (2) If the Court considers that the attendance of a person to whom leave has been granted under subrule (1) has resulted in additional costs for any party, or the corporation, which should be borne by the person to whom leave was granted, the Court may —
 - (a) direct that the person pay the costs; and

- (b) order that the person not be heard further in the proceeding until the costs are paid or secured to the Court's satisfaction.
- (3) The Court may order that a person who is, or who claims to be, a creditor, contributory or officer of a corporation be added as a defendant to the proceeding.
- (4) The Court may grant leave to a person under subrule (1), or order that a person be added as a defendant to a proceeding under subrule (3) —
 - (a) on application by the person or a party to the proceeding; or
 - (b) on the Court's own initiative.
- (5) The Court may —
 - (a) appoint a creditor or contributory to represent all or any class of the creditors or contributories on any question, or in relation to any proceeding, before the Court, at the expense of the corporation; and
 - (b) remove any person so appointed.

[Rule 21 inserted in Gazette 8 May 2000 pp.2172-3.]

22. Inquiry in relation to corporation's debts etc.

The Court may direct an inquiry in relation to the debts, claims or liabilities, or a class of debts, claims or liabilities, of or affecting a corporation to which a proceeding relates.

[Rule 22 inserted in Gazette 8 May 2000 p.2174.]

23. Meetings ordered by the Court

Subject to the Law, this Order and any direction of the Court to the contrary, regulations 5.6.12 to 5.6.36A of the Corporations Regulations apply to meetings ordered by the Court.

[Rule 23 inserted in Gazette 8 May 2000 p.2174.]

**Part 3 — Compromises and arrangements in relation to
Part 5.1 bodies**

[Heading inserted in Gazette 8 May 2000 p.2174.]

24. Application of Part 3

This Part applies if an application is made to the Court for approval of a compromise or arrangement between a Part 5.1 body and its creditors or members, or any class of its creditors or members.

[Rule 24 inserted in Gazette 8 May 2000 p.2174.]

25. Nomination of chairperson for meeting

Before the hearing of an application under section 411(1), (1A) or (1B) of the Law, the plaintiff must file an affidavit stating —

- (a) the names of the persons who have been nominated to be the chairperson and alternate chairperson of the meeting;
- (b) that each person nominated —
 - (i) is willing to act as chairperson;
 - (ii) has had no previous relationship or dealing with the body, or any other person interested in the proposed compromise or arrangement, except as disclosed in the affidavit; and
 - (iii) has no interest or obligation that may give rise to a conflict of interest or duty if the person were to act as chairperson of the meeting, except as disclosed in the affidavit;
- (c) the name of the person (if any) proposed to be appointed to administer the proposed compromise or arrangement; and
- (d) that the person does not fall within section 411(7)(a) to (f) of the Law, except as disclosed in the affidavit.

[Rule 25 inserted in Gazette 8 May 2000 pp.2174-5.]

26. Order for meetings to identify proposed scheme

An order under section 411(1) or (1A) of the Law ordering a meeting or meetings in relation to a proposed compromise or arrangement must set out in a schedule, or otherwise identify, a copy of the proposed compromise or arrangement.

[Rule 26 inserted in Gazette 8 May 2000 p.2175.]

27. Notice of hearing (s. 411(4), s. 413(1) of the Law) — Form 6

- (1) This Rule applies to —
 - (a) an application, under section 411(4) of the Law, for an order approving a proposed compromise or arrangement in relation to a Part 5.1 body; and
 - (b) an application, under section 413(1) of the Law, for an order in relation to the reconstruction of a Part 5.1 body, or Part 5.1 bodies, or the amalgamation of 2 or more Part 5.1 bodies.
- (2) Unless the Court otherwise orders, the plaintiff must publish a notice of the hearing of the application.
- (3) The notice must be —
 - (a) in accordance with Form 6; and
 - (b) published in accordance with rule 19 at least 5 days before the date fixed for the hearing of the application.

[Rule 27 inserted in Gazette 8 May 2000 pp.2175-6.]

28. Copy of order approving compromise or arrangement to be lodged with Commission

If the Court makes an order under section 411(1), (1A) or (4), or 413(1) of the Law, the plaintiff must, as soon as practicable after the order is made —

- (a) have the order sealed;

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- (b) lodge an office copy of the order with the Commission;
and
- (c) serve an office copy of the order on any person
appointed to administer the compromise or arrangement.

[Rule 28 inserted in Gazette 8 May 2000 p.2176.]

**Part 4 — Receivers and other controllers of corporation
property (Part 5.2 of the Law)**

[Heading inserted in Gazette 8 May 2000 p.2176.]

29. Inquiry into conduct of controller (s. 423 of the Law)

A complaint to the Court under section 423(1)(b) of the Law about an act or omission of a receiver, or a controller appointed by the Court, must be made by an originating process seeking an inquiry in relation to the complaint.

[Rule 29 inserted in Gazette 8 May 2000 p.2176.]

**Part 5 — Winding-up proceedings (including oppression
proceedings where winding-up is sought)**

[Heading inserted in Gazette 8 May 2000 p.2177.]

30. Application of Part 5

This Part applies to the following applications for the winding-up of a company —

- (a) an application under section 246AA of the Law in a case of oppression or injustice;
- (b) an application under Part 5.4 or Part 5.4A of the Law.

[Rule 30 inserted in Gazette 8 May 2000 p.2177.]

31. Affidavit accompanying statutory demand (s. 459E(3) of the Law) — Form 7

For the purposes of section 459E(3) of the Law, the affidavit accompanying a statutory demand relating to a debt, or debts, owed by a company must —

- (a) be in accordance with Form 7 and state the matters mentioned in that Form;
- (b) be made by the creditor or by a person with the authority of the creditor or creditors; and
- (c) not state a proceeding number, or refer to a Court proceeding, in any heading or title to the affidavit.

[Rule 31 inserted in Gazette 8 May 2000 p.2177.]

32. Application for leave to apply for winding-up in insolvency (s. 459P(2) of the Law)

An application for leave to apply to the Court for an order that a company be wound up in insolvency may be made at the same time as the application for an order that the company be wound up in insolvency is made.

[Rule 32 inserted in Gazette 8 May 2000 p.2177.]

33. Affidavit in support of application for winding-up (s. 459P, s. 462, s. 464 of the Law)

- (1) The affidavit in support of an originating process seeking an order that a company be wound up must be made by the plaintiff or by a person with the authority of the plaintiff or plaintiffs.
- (2) If the application is made in reliance on a failure by the company to comply with a statutory demand, the affidavit must —
 - (a) verify service of the demand on the company;
 - (b) verify the failure of the company to comply with the demand; and

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- (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable by the company at the date when the affidavit is made.
- (3) If the application is made in reliance on the ground mentioned in section 461(1)(a) of the Law, the affidavit must —
 - (a) state whether the company is able to pay all its debts as and when they become due and payable; and
 - (b) refer to the company's most recent balance sheet and profit and loss statement as an annexure or exhibit to the affidavit, or explain their absence.
- (4) The affidavit must be made within 7 days before the originating process is filed.

[Rule 33 inserted in Gazette 8 May 2000 pp.2177-8.]

34. Consent of liquidator (s. 532(9) of the Law) — Form 8

- (1) In this Rule —
“liquidator” does not include a provisional liquidator.
- (2) For the purposes of section 532(9) of the Law, the consent of an official liquidator to act as liquidator of a company must be in accordance with Form 8.
- (3) In an application for an order that a company be wound up, the plaintiff must —
 - (a) before the hearing of the application, file the consent mentioned in subrule (2) of an official liquidator who would be entitled to be appointed as liquidator of the company; and
 - (b) serve a copy of the consent on the company at least one day before the hearing.

[Rule 34 inserted in Gazette 8 May 2000 pp.2178-9.]

35. Notice of application for winding-up — Form 9

- (1) Unless the Court otherwise orders, the plaintiff must publish a notice of the application for an order that a company be wound up.
- (2) The notice must be —
 - (a) in accordance with Form 9; and
 - (b) published in accordance with Rule 19 —
 - (i) at least 3 days after the originating process is served on the company; and
 - (ii) at least 7 days before the date fixed for hearing of the application.

[Rule 35 inserted in Gazette 8 May 2000 p.2179.]

36. Applicant to make copies of documents available

A copy of any document filed in a proceeding to which this Part applies must be available at the plaintiff's address for service for inspection by a creditor, contributory or officer of the company, or an officer of a creditor or contributory of the company.

[Rule 36 inserted in Gazette 8 May 2000 p.2179.]

37. Discontinuance of application for winding-up

An application for an order that a company be wound up may not be discontinued except with the leave of the Court.

[Rule 37 inserted in Gazette 8 May 2000 p.2179.]

38. Appearance before Principal Registrar

After filing an originating process seeking an order that a company be wound up, the plaintiff must, if required —

- (a) appear before the Principal Registrar on a date to be appointed by the Principal Registrar; and

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- (b) satisfy the Principal Registrar that the plaintiff has complied with the Law and this Order in relation to applications for a winding-up order.

[Rule 38 inserted in Gazette 8 May 2000 p.2180.]

39. Order substituting plaintiff in application for winding-up (s. 465B of the Law) — Form 10

- (1) If the Court makes an order under section 465B of the Law, the Court may also order that the substituted plaintiff or plaintiffs publish a notice stating that the substituted plaintiff or plaintiffs intend to apply for an order that the company be wound-up.
- (2) The notice must be —
 - (a) in accordance with Form 10; and
 - (b) published in accordance with Rule 19 or as otherwise directed by the Court.

[Rule 39 inserted in Gazette 8 May 2000 p.2180.]

40. Notice of winding-up order and appointment of liquidator — Form 11

- (1) This Rule applies if the Court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.
- (2) Not later than the day after the order is made, the plaintiff must inform the liquidator of the appointment.
- (3) As soon as practicable after being informed of the appointment, the liquidator must publish a notice of the winding-up order and the liquidator's appointment.
- (4) The notice must be —
 - (a) in accordance with Form 11; and
 - (b) published in accordance with Rule 19.

- (5) In this Rule —
“**liquidator**” does not include a provisional liquidator.
[Rule 40 inserted in Gazette 8 May 2000 pp.2180-1.]

Part 6 — Provisional liquidators (Part 5.4B of the Law)

[Heading inserted in Gazette 8 May 2000 p.2181.]

41. Appointment of provisional liquidator (s. 472 of the Law) — Form 8

- (1) An application by a company, a creditor or contributory of the company, or the Commission, under section 472(2) of the Law, for an official liquidator to be appointed as a provisional liquidator of the company must be accompanied by the written consent of the official liquidator.
- (2) The consent must be in accordance with Form 8.
- (3) An order appointing a provisional liquidator of a company must include a short description of the property of the company that the provisional liquidator may take into the provisional liquidator’s custody.
- (4) The Court may require the plaintiff to give an undertaking as to damages.

[Rule 41 inserted in Gazette 8 May 2000 p.2181.]

42. Notice of appointment of provisional liquidator — Form 12

- (1) This Rule applies if the Court orders that an official liquidator be appointed as a provisional liquidator of a company.
- (2) Not later than the day after the order is made, the plaintiff must —
- (a) except if the plaintiff is the Commission — lodge an office copy of the order with the Commission;

- (b) serve an office copy of the order on the company (except if the plaintiff is the company) and on any other person as directed by the Court; and
 - (c) give to the provisional liquidator an office copy of the order and a written statement that the order has been served as required by paragraph (b).
- (3) As soon as practicable after the order is made, the provisional liquidator must publish a notice of the provisional liquidator's appointment.
- (4) The notice must be —
- (a) in accordance with Form 12; and
 - (b) published in accordance with Rule 19.

[Rule 42 inserted in Gazette 8 May 2000 pp.2181-2.]

Part 7 — Liquidators

[Heading inserted in Gazette 8 May 2000 p.2182.]

43. Resignation of liquidator (s. 473(1) of the Law)

- (1) A liquidator appointed by the Court who wishes to resign office must file with the Principal Registrar, and lodge with the Commission, a memorandum of resignation.
- (2) The resignation takes effect on the filing and lodging of the memorandum.

[Rule 43 inserted in Gazette 8 May 2000 p.2182.]

44. Filling vacancy in office of liquidator (s. 473(7), s. 502 of the Law)

- (1) If, for any reason, there is no liquidator acting in a winding-up, the Court may —
 - (a) in the case of a winding-up by the Court — appoint another official liquidator whose written consent in accordance with Form 8 has been filed; and

- (b) in the case of a voluntary winding-up — appoint another registered liquidator whose written consent in accordance with Form 8 has been filed.
- (2) The Court may make the appointment —
 - (a) in any case — on application by the Commission, a creditor or a contributory; or
 - (b) in the case of a winding-up by the Court — on its own initiative.

[Rule 44 inserted in Gazette 8 May 2000 p.2183.]

45. Report to liquidator as to company's affairs (s. 475 of the Law)

- (1) If a person is required under section 475 of the Law to submit and verify a report as to the affairs of a company, the liquidator must give to the person the appropriate forms and instructions for the preparation of the report.
- (2) Except by order of the Court, no person is to be allowed out of the property of a company any costs or expenses incurred in relation to the preparation of the report that have not been —
 - (a) sanctioned by the liquidator before being incurred; or
 - (b) taxed or assessed.
- (3) The liquidator must report to the Court any default in complying with the requirements of section 475 of the Law.
- (4) In this Rule —
“liquidator” includes a provisional liquidator.

[Rule 45 inserted in Gazette 8 May 2000 pp.2183-4.]

46. Liquidator to file certificate and copy of settled list of contributories (s. 478 of the Law)

If, in a winding-up by the Court, a liquidator has settled and certified a list, or supplementary list, of contributories, the

liquidator must, within 14 days after doing so, file the certificate and a copy of the list.

[Rule 46 inserted in Gazette 8 May 2000 p.2184.]

**47. Release of liquidator and deregistration of company
(s. 480(c) and (d) of the Law)**

- (1) This Rule applies to an application by the liquidator of a company —
 - (a) for an order that the liquidator be released; or
 - (b) for an order that the liquidator be released and that the Commission deregister the company.
- (2) The interlocutory process seeking the order must include —
 - (a) a notice stating that any objection to the release of the liquidator must be made by filing and serving a notice of objection, in the prescribed form, within 21 days after the date of service of the interlocutory process; and
 - (b) a statement setting out the terms of section 481(3) of the Law.
- (3) The supporting affidavit must include details of the following matters —
 - (a) whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding-up;
 - (b) any calls made on contributories in the course of the winding-up;
 - (c) any dividends paid in the course of the winding-up;
 - (d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;
 - (e) whether the Commission has appointed an auditor to report on an account or statement of the position in the winding-up under section 539(2) of the Law;

- (f) whether the Court has ordered a report on the accounts of the liquidator to be prepared;
 - (g) whether any objection to the release of the liquidator has been received by the liquidator from —
 - (i) an auditor appointed by the Commission or by the Court; or
 - (ii) any creditor, contributory or other interested person;
 - (h) whether any report has been submitted by the liquidator to the Commission under section 533 of the Law;
 - (i) whether the liquidator considers it necessary to report on the affairs of the company or any of its officers;
 - (j) any property disclaimed in the course of the winding-up;
 - (k) any remuneration paid or payable to the liquidator and how such remuneration was determined;
 - (l) any costs, charges or expenses payable by the liquidator if the Court grants the liquidator's release;
 - (m) if the application is made under section 480(c) of the Law — the facts and circumstances by reason of which it is submitted that the company should not be deregistered.
- (4) The liquidator must include in the supporting affidavit the statements set out in paragraphs (a) and (b) of this subrule, including, if appropriate, the words in brackets —
- (a) “To the best of my belief, there has been no act done or default made by me in the administration of the affairs of the subject corporation or otherwise in relation to my conduct as liquidator which is likely to give rise to any liability to the subject corporation or any creditor or contributory (except as disclosed in this affidavit)”;
 - (b) “I am not aware of any claim made by any person that there has been any such act or default (except as disclosed in this affidavit)”.

- (5) The liquidator must file with, or annex to, the supporting affidavit —
 - (a) a statement of the financial position of the company at the date when the interlocutory process seeking release was filed; and
 - (b) a summary of the liquidator's receipts and payments in winding-up the company.
- (6) Unless the Court otherwise orders, the liquidator must serve by prepaid post, on each creditor who has proved a debt in the course of the winding-up, and on each contributory, a copy of the interlocutory process accompanied by —
 - (a) a copy of the summary of the liquidator's receipts and payments in winding-up the company; and
 - (b) a copy of the statement of the financial position of the company at the date when the interlocutory process seeking release was filed.

[Rule 47 inserted in Gazette 8 May 2000 pp.2184-7.]

48. Objection to release of liquidator — Form 13

- (1) A creditor or contributory of a company who wishes to object to the release of the liquidator of the company must, within 21 days after the date of service of the interlocutory process seeking release —
 - (a) file —
 - (i) a notice of objection in accordance with Form 13; and
 - (ii) if appropriate, an affidavit stating any facts relied on;
 - and
 - (b) serve a copy of the notice and the affidavit (if any) on the liquidator.

- (2) If the liquidator is served with a notice of objection by a creditor or contributory, the liquidator must, within 3 days after being served, serve on the creditor or contributory a copy of the affidavit supporting the interlocutory process.

[Rule 48 inserted in Gazette 8 May 2000 p.2187.]

49. Report on accounts of liquidator (s.481 of the Law)

- (1) If the Court orders that a report on the accounts of a liquidator be prepared under section 481(1) of the Law, the liquidator must give to the auditor appointed to prepare the report all information, books and vouchers required to prepare the report.
- (2) On completing the report, the auditor must —
- (a) file a copy of the report in a sealed envelope that is marked with the title and number of the proceeding and the words “Auditor’s report under subsection 481(1) of the Corporations Law”;
 - (b) serve a copy of the report on the liquidator; and
 - (c) lodge a copy of the report with the Commission.
- (3) Except with the leave of the Court, a report is not available for inspection by any person except the liquidator or the Commission.

[Rule 49 inserted in Gazette 8 May 2000 pp.2187-8.]

50. Application for payment of call (s.483(3)(b) of the Law) — Form 14

The affidavit in support of an application by the liquidator of a company, under section 483(3)(b) of the Law, for an order for the payment of a call must be in accordance with Form 14.

[Rule 50 inserted in Gazette 8 May 2000 p.2188.]

51. Distribution of surplus by liquidator with special leave of the Court (s. 488(2) of the Law) — Form 15

- (1) The affidavit in support of an application for special leave to distribute a surplus must state how the liquidator intends to distribute the surplus including the name and address of each person to whom the liquidator intends to distribute any part of the surplus.
- (2) At least 14 days before the date fixed for hearing of the application, the liquidator must publish a notice of the application.
- (3) The notice must be —
 - (a) in accordance with Form 15; and
 - (b) published in accordance with Rule 19.

[Rule 51 inserted in Gazette 8 May 2000 pp.2188-9.]

52. Powers delegated to liquidator by the Court (s. 488 of the Law)

Subject to the Corporations Law, the Corporations Regulations, this Order, and any order of the Court, the powers and duties conferred or imposed on the Court by Part 5.4B of the Law in respect of the matters mentioned in section 488(1) of the Law may be exercised or performed by a liquidator appointed by the Court as an officer of the Court and subject to the control of the Court.

[Rule 52 inserted in Gazette 8 May 2000 p.2189.]

53. Inquiry into conduct of liquidator (s. 536 of the Law)

- (1) A complaint to the Court under section 536(1)(b) of the Law must be made —
 - (a) in the case of a winding-up by the Court — by an interlocutory process seeking an inquiry; and
 - (b) in the case of a voluntary winding-up — by an originating process seeking an inquiry.

- (2) A report to the Court by the Commission under section 536(2) of the Law must be made —
- (a) in the case of a winding-up by the Court — by filing —
- (i) an interlocutory process seeking orders under the subsection; and
- (ii) a written report in a sealed envelope that is marked with the title and number of the proceeding;
- and
- (b) in the case of a voluntary winding-up — by filing —
- (i) an originating process seeking orders under the subsection; and
- (ii) a written report in a sealed envelope that is marked with the title of the proceeding and provision for its number.
- (3) The contents of a report filed under subrule (2) need not, at the time of filing, be verified by an affidavit.
- (4) Except with the leave of the Court, a report made under section 536(2) of the Law is not available for inspection by any person except the liquidator or the Commission.
- (5) In this Rule —
- “liquidator”** includes a provisional liquidator.

[Rule 53 inserted in Gazette 8 May 2000 pp.2189-90.]

Part 8 — Special managers (Part 5.4B of the Law)

[Heading inserted in Gazette 8 May 2000 p.2190.]

- 54. Application for appointment of special manager (s. 484 of the Law)**
- (1) An application by a liquidator for the appointment of a special manager in relation to a company must state the powers which,

in the liquidator's opinion, should be entrusted by the Court to the special manager.

- (2) The supporting affidavit must state —
 - (a) the circumstances making it proper that a special manager be appointed;
 - (b) details of the remuneration proposed to be paid to the special manager; and
 - (c) whether any committee of inspection in the winding-up, or a meeting of creditors, has approved the appointment of a special manager.

[Rule 54 inserted in Gazette 8 May 2000 p.2190.]

55. Security given by special manager (s. 484 of the Law)

- (1) The Court may, from time to time, direct that the amount of security given by a special manager be varied.
- (2) Unless the Court otherwise directs, the costs of furnishing the security given by a special manager in respect of a particular winding-up —
 - (a) are the personal expenses of the special manager; and
 - (b) must not be charged against the property of the company as an expense incurred in the winding-up.

[Rule 55 inserted in Gazette 8 May 2000 p.2191.]

56. Special manager's receipts and payments (s. 484 of the Law)

- (1) A special manager must give to the liquidator —
 - (a) an account of the special manager's receipts and payments; and
 - (b) a statutory declaration verifying the account.
- (2) If the liquidator approves the account, the liquidator must include the total amounts of the special manager's receipts and payments in the liquidator's accounts.

[Rule 56 inserted in Gazette 8 May 2000 p.2191.]

Part 9 — Remuneration of office-holders

[Heading inserted in Gazette 8 May 2000 p.2191.]

57. Remuneration of receiver (s. 425(1) of the Law) —Form 16

- (1) This Rule applies to an application by a receiver of property of a corporation for an order under section 425(1) of the Law fixing the receiver's remuneration.
- (2) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the receiver must serve a notice in accordance with Form 16 of the receiver's intention to apply for the order, and a copy of any affidavit on which the receiver intends to rely, on the following persons:
 - (a) the person who appointed the receiver;
 - (b) any creditor holding security over all or any of the same property of the corporation (except if the creditor is the person who appointed the receiver);
 - (c) any administrator, liquidator or provisional liquidator of the corporation;
 - (d) any administrator of a deed of company arrangement executed by the corporation;
 - (e) if there is no person of the kind mentioned in paragraph (c) or (d) —
 - (i) each of the 5 largest (measured by amount of debt) unsecured creditors of the corporation; and
 - (ii) each member of the corporation whose shareholding represents at least 10% of the issued capital of the corporation.
- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory, or any person mentioned in subrule (2)(c), (d) or (e), may give to the receiver a notice of objection to the remuneration claimed, stating the grounds of objection.

- (4) If the receiver does not receive a notice of objection within the period mentioned in subrule (3) —
- (a) the receiver may file an affidavit, made after the end of that period, in support of the originating process, or interlocutory process, seeking the order stating —
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
 - (ii) that the receiver has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3);
 - (b) the receiver may indorse the originating process, or interlocutory process, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the receiver; and
 - (c) the application may be so dealt with.
- (5) If the receiver receives a notice of objection within the period mentioned in subrule (3), the receiver must serve a copy of the originating process, or interlocutory process, seeking the order on each creditor or contributory, or other person, who has given a notice of objection.
- (6) An affidavit in support of the originating process, or interlocutory process, seeking the order must —
- (a) state the nature of the work carried out by the receiver;
 - (b) state the amount of remuneration claimed;
 - (c) include a summary of the receipts taken and payments made by the receiver for the period for which remuneration is claimed; and
 - (d) if the receivership is continuing — give details of any matters delaying the completion of the receivership.

[Rule 57 inserted in Gazette 8 May 2000 pp.2191-3.]

58. Remuneration of administrator (s. 449E(1) of the Law) — Form 16

- (1) This Rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under section 449E(1) of the Law fixing the administrator's remuneration.
- (2) The administrator must not apply for the order until after the end of 28 days after the date when a meeting of creditors mentioned in section 449E(1)(a) of the Law was held.
- (3) At least 21 days before filing an originating process, or interlocutory process, seeking the order, the administrator must serve a notice in accordance with Form 16 of the administrator's intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following persons:
 - (a) each creditor who was present, in person or by proxy at the meeting of creditors;
 - (b) each member of any committee of inspection;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the administrator does not receive a notice of objection within the period mentioned in subrule (4) —
 - (a) the administrator may file an affidavit, made after the end of that period, in support of the originating process, or interlocutory process, seeking the order stating —
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and

- (ii) that the administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4);
 - (b) the administrator may indorse the originating process, or interlocutory process, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and
 - (c) the application may be so dealt with.
- (6) If the administrator receives a notice of objection within the period mentioned in subrule (4), the administrator must serve a copy of the originating process, or interlocutory process, seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the originating process, or interlocutory process, seeking the order must —
 - (a) state the nature of the work carried out by the administrator;
 - (b) state the amount of remuneration claimed;
 - (c) include a summary of the receipts taken and payments made by the administrator for the period for which remuneration is claimed; and
 - (d) if the administration is continuing — give details of any matters delaying the completion of the administration.

[Rule 58 inserted in Gazette 8 May 2000 pp.2194-5.]

59. Remuneration of provisional liquidator (s. 473(2) of the Law) — Form 16

- (1) This Rule applies to an application by a provisional liquidator of a company for an order under section 473(2) of the Law determining the provisional liquidator's remuneration.

- (2) The application must be made by interlocutory process in the winding-up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the provisional liquidator must serve a notice in accordance with Form 16 of the provisional liquidator's intention to apply for the order, and a copy of any affidavit on which the provisional liquidator intends to rely, on the following persons:
 - (a) any liquidator (except the provisional liquidator) of the company;
 - (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the provisional liquidator does not receive a notice of objection within the period mentioned in subrule (4) —
 - (a) the provisional liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating —
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
 - (ii) that the provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4);
 - (b) the provisional liquidator may indorse the interlocutory process with a request that the application be dealt with

in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and

- (c) the application may be so dealt with.
- (6) If the provisional liquidator receives a notice of objection within the period mentioned in subrule (4), the provisional liquidator must serve a copy of the interlocutory process seeking the order —
- (a) on each creditor or contributory who has given a notice of objection; and
 - (b) on the liquidator (if any).
- (7) An affidavit in support of the interlocutory process seeking the order must —
- (a) state the nature of the work carried out by the provisional liquidator;
 - (b) state the amount of remuneration claimed;
 - (c) include a summary of the receipts taken and payments made by the provisional liquidator for the period for which remuneration is claimed; and
 - (d) if the winding-up proceeding has not been determined — give details of —
 - (i) any reasons known to the provisional liquidator why the winding-up proceeding has not been determined; and
 - (ii) any reasons why the provisional liquidator's remuneration should be determined before the determination of the winding-up proceeding.

[Rule 59 inserted in Gazette 8 May 2000 pp.2196-8.]

**60. Remuneration of liquidator (s. 473(3) of the Law) —
Form 16**

- (1) This Rule applies to an application by a liquidator of a company for an order under subsection 473(3) of the Law determining the liquidator's remuneration.

- (2) The application —
 - (a) must be made by interlocutory process in the winding-up proceeding; and
 - (b) must not be made until after the end of 28 days after the date of the meeting of creditors mentioned in section 473(4) of the Law.
- (3) At least 21 days before filing the interlocutory process seeking the order, the liquidator must serve a notice in accordance with Form 16 of the liquidator's intention to apply for the order, and a copy of any affidavit on which the liquidator intends to rely, on the following persons:
 - (a) each creditor who was present, in person or by proxy, at the meeting of creditors;
 - (b) each member of any committee of inspection;
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the liquidator does not receive a notice of objection within the period mentioned in subrule (4) —
 - (a) the liquidator may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating —
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
 - (ii) that the liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4);

- (b) the liquidator may indorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the liquidator; and
 - (c) the application may be so dealt with.
- (6) If the liquidator receives a notice of objection within the period mentioned in subrule (4), the liquidator must serve a copy of the interlocutory process seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the interlocutory process seeking the order must —
 - (a) state the nature of the work carried out by the liquidator;
 - (b) state the amount of remuneration claimed;
 - (c) include a summary of the receipts taken and payments made by the liquidator for the period for which remuneration is claimed; and
 - (d) if the winding-up is continuing — give details of any matters delaying the completion of the winding-up.

[Rule 60 inserted in Gazette 8 May 2000 pp.2198-200.]

61. Remuneration of special manager (s. 484(2) of the Law) — Form 16

- (1) This Rule applies to an application by a special manager of the property or business of a company for an order under section 484(2) of the Law fixing the special manager's remuneration.
- (2) The application must be made by interlocutory process in the winding-up proceeding.
- (3) At least 21 days before filing the interlocutory process seeking the order, the special manager must serve a notice in accordance with Form 16 of the special manager's intention to apply for the order, and a copy of any affidavit on which the special manager intends to rely, on the following persons —
 - (a) the liquidator of the company;

- (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company; and
 - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the special manager does not receive a notice of objection within the period mentioned in subrule (4) —
 - (a) the special manager may file an affidavit, made after the end of that period, in support of the interlocutory process seeking the order stating —
 - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
 - (ii) that the special manager has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4);
 - (b) the special manager may indorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the special manager; and
 - (c) the application may be so dealt with.
- (6) If the special manager receives a notice of objection within the period mentioned in subrule (4), the special manager must serve a copy of the interlocutory process seeking the order —
 - (a) on each creditor or contributory who has given a notice of objection; and

- (b) on the liquidator.
- (7) The affidavit in support of the interlocutory process seeking the order must —
 - (a) state the nature of the work carried out by the special manager;
 - (b) state the amount of remuneration claimed;
 - (c) include a summary of the receipts taken and payments made by the special manager for the period for which remuneration is claimed; and
 - (d) if the special management is continuing — give details of any matters delaying the completion of the special management.

[Rule 61 inserted in Gazette 8 May 2000 pp.2200-2.]

Part 10 — Winding-up generally

[Heading inserted in Gazette 8 May 2000 p.2202.]

62. Determination of value of debts or claims (s. 554A(2) of the Law)

A reference to the Court by a liquidator of a company under section 554A(2)(b) of the Law must be made —

- (a) in the case of a winding-up by the Court — by filing an interlocutory process seeking an order estimating, or determining a method for working out, the value of the debt or claim; and
- (b) in the case of a voluntary winding-up — by filing an originating process seeking an order estimating, or determining a method for working out, the value of the debt or claim.

[Rule 62 inserted in Gazette 8 May 2000 p.2202.]

63. Disclaimer of contract (s. 568(1A) of the Law)

- (1) The affidavit in support of an application by a liquidator, under section 568(1A) of the Law, for leave to disclaim a contract in relation to a company must —
 - (a) specify the persons interested, and their interests, under the contract; and
 - (b) state the facts on which it is submitted that the contract should be disclaimed.
- (2) The liquidator must serve the affidavit on each party to the contract (except the company) and on any person interested in the contract.

[Rule 63 inserted in Gazette 8 May 2000 p.2202.]

64. Winding-up Part 5.7 bodies (s. 583, s. 585 of the Law) and registered schemes (s. 601ND of the Law)

This Order applies, with any necessary adaptations, and in the same way as it applies to a company, in relation to the winding-up of a Part 5.7 body or a registered scheme.

[Rule 64 inserted in Gazette 8 May 2000 p.2203.]

Part 11 — Examinations and orders (Part 5.9 Divisions 1 and 2 of the Law)

[Heading inserted in Gazette 8 May 2000 p.2203.]

65. Definition for Part 11

In this Part —

“**examination summons**” means a summons under section 596A or 596B of the Law for the examination of a person about a corporation’s examinable affairs.

[Rule 65 inserted in Gazette 8 May 2000 p.2203.]

66. Application for examination or investigation under s. 411, s. 423 or s. 536(3) of the Law

- (1) An application for an order for the examination or investigation of a person under section 411, 423 or 536(3) of the Law may be made by —
 - (a) the Commission;
 - (b) a person authorised by the Commission;
 - (c) a creditor or contributory; or
 - (d) any other person aggrieved by the conduct of —
 - (i) a person appointed to administer a compromise or arrangement;
 - (ii) a controller; or
 - (iii) a liquidator or provisional liquidator.
- (2) The application may be made ex parte.
- (3) The provisions of this Part that apply to an examination under Division 1 of Part 5.9 of the Law apply, with any necessary adaptations, to an examination or an investigation under section 411, 423 or 536(3) of the Law.

[Rule 66 inserted in Gazette 8 May 2000 pp.2203-4.]

67. Application for examination summons (s. 596A, s. 596B of the Law) — Form 17

- (1) An application for the issue of an examination summons must be made by filing an interlocutory process or an originating process, as the case requires.
- (2) The application may be made ex parte.
- (3) The originating process, or interlocutory process, seeking the issue of the examination summons must be —
 - (a) supported by an affidavit stating the facts in support of the process; and

- (b) accompanied by a draft examination summons.
- (4) The originating process, or interlocutory process, and supporting affidavit must be filed in a sealed envelope marked, as appropriate —
 - (a) “Application and supporting affidavit for issue of summons for examination under section 596A of the Corporations Law”; or
 - (b) “Application and supporting affidavit for issue of summons for examination under section 596B of the Corporations Law”.
- (5) If the application is not made by the liquidator, the liquidator must be given notice of the application and, if required by the liquidator, served with a copy of the originating process, or interlocutory process, and the supporting affidavit.
- (6) If the application is not made by the Commission, the Commission must be given notice of the application and, if required by the Commission, served with a copy of the originating process, or interlocutory process, and the supporting affidavit.
- (7) Unless the Court otherwise orders, an affidavit in support of an application for an examination summons is not available for inspection by any person.
- (8) An examination summons is to be in accordance with Form 17.
[Rule 67 inserted in Gazette 8 May 2000 pp.2204-5.]

68. Service of examination summons

An examination summons issued by the Court must be personally served, or served in any other manner as the Court may direct, on the person who is to be examined at least 8 days before the date fixed for the examination.

[Rule 68 inserted in Gazette 8 May 2000 p.2205.]

69. Discharge of examination summons

- (1) This Rule applies if a person is served with an examination summons.
- (2) Within 3 days after the person is served with the examination summons, the person may apply to the Court for an order discharging the summons by filing —
 - (a) an interlocutory process seeking an order discharging the summons; and
 - (b) an affidavit stating the facts in support of the interlocutory process.
- (3) As soon as practicable after filing the interlocutory process seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory process and the supporting affidavit on —
 - (a) the person who applied for the examination; and
 - (b) unless that person is the Commission or a person authorised by the Commission — the Commission.

[Rule 69 inserted in Gazette 8 May 2000 pp.2205-6.]

70. Filing of record of examination (s. 597(13) of the Law)

If the Court makes an order in relation to an examination under section 597(13) of the Law, the Court may give directions for the filing of the written record of the examination.

[Rule 70 inserted in Gazette 8 May 2000 p.2206.]

71. Authentication of transcript of examination (s. 597(14) of the Law)

For the purposes of subsection 597(14) of the Law, a transcript of an examination may be authenticated —

- (a) by the person, or persons, who prepared the record of examination, or under whose supervision the record was prepared, certifying in writing signed by the person or

persons, that the record is a true transcript of the record of examination; or

- (b) by any person present at the examination, or any part of the examination, signing the person's name at the bottom of each page of the written record that records a part of the examination at which the person was present.

[Rule 71 inserted in Gazette 8 May 2000 p.2206.]

72. Inspection of record or transcript of examination or investigation under s. 411, s. 423 or s. 536 of the Law

- (1) A written record or transcript of an examination or investigation under section 411, 423 or 536 of the Law is not available for inspection by any person except —
 - (a) with the consent of the liquidator (if any) or the Commission; or
 - (b) by leave of the Court.
- (2) This Rule does not apply to the liquidator, the Commission or any person authorised by the Commission.

[Rule 72 inserted in Gazette 8 May 2000 p.2207.]

73. Entitlement to record or transcript of examination held in public

- (1) This Rule applies if —
 - (a) an examination under section 597 of the Law is held wholly or partly in public; and
 - (b) a written record or transcript of the examination is filed in the Court.
- (2) The person examined may apply to the Principal Registrar, within 3 years after the date of completion of the examination, for a copy of the record or transcript of the part of the examination of the person that was held in public.

- (3) On receiving an application from a person under subrule (2), and any applicable fee, the Principal Registrar must give a copy of the record or transcript to the person.

[Rule 73 inserted in Gazette 8 May 2000 p.2207.]

74. Default in relation to examination

- (1) This Rule applies if a person is summoned or ordered by the Court to attend for examination, and —
- (a) without reasonable cause, the person —
 - (i) fails to attend at the time and place appointed;
 - (ii) fails to attend from day to day until the conclusion of the examination;
 - (iii) refuses or fails to take an oath or make an affirmation;
 - (iv) refuses or fails to answer a question that the Court directs the person to answer;
 - (v) refuses or fails to produce books that the summons requires the person to produce; or
 - (vi) fails to comply with a requirement by the Court to sign a written record of the examination;
 - or
 - (b) before the day fixed for the examination, the person who applied for the summons or order satisfies the Court that there is reason to believe that the person summoned or ordered to attend for examination has absconded or is about to abscond.
- (2) The Court may —
- (a) issue a warrant for the arrest of the person summoned or ordered to attend for examination; and
 - (b) make any other orders that the Court thinks just or necessary.

[Rule 74 inserted in Gazette 8 May 2000 p.2208.]

75. Service of application for order in relation to breaches etc. by person concerned with corporation (s. 598 of the Law)

- (1) This Rule applies to a person applying for an order under section 598 of the Law.
- (2) In addition to complying with Rules 15 and 16, the person must serve a copy of the originating process, or interlocutory process, as the case requires, and the supporting affidavit on any liquidator or provisional liquidator (except if the person is the liquidator or provisional liquidator) of the corporation or body.

[Rule 75 inserted in Gazette 8 May 2000 p.2209.]

Part 12 — Acquisition of shares (Chapter 6 of the Law) and Securities (Chapter 7 of the Law)

[Heading inserted in Gazette 8 May 2000 p.2209.]

76. Service on Commission in relation to proceedings under Chapter 6 or 7 of the Law

If the Commission is not a party to an application made under Chapter 6 or 7 of the Law, the plaintiff must serve a copy of the originating process and the supporting affidavit on the Commission as soon as practicable after filing the originating process.

[Rule 76 inserted in Gazette 8 May 2000 p.2209.]

77. Application for summons for appearance of person (s. 1092(3) of the Law) — Form 18

- (1) An application for the issue of a summons under section 1092(3) of the Law must be made by filing an originating process or an interlocutory process.
- (2) The application may be made ex parte.

- (3) The originating process, or interlocutory process, seeking the issue of the summons must be —
 - (a) supported by an affidavit stating the facts in support of the process; and
 - (b) accompanied by a draft summons.
- (4) Unless the Court otherwise orders, a summons issued under this Rule is to be in accordance with Form 18.

[Rule 77 inserted in Gazette 8 May 2000 pp.2209-10.]

78. Application for orders relating to refusal to register transfer or transmission of shares etc. (s. 1094 of the Law)

As soon as practicable after filing an originating process seeking an order under section 1094 of the Law, the plaintiff must serve a copy of the originating process and the supporting affidavit on —

- (a) the company; and
- (b) any person against whom an order is sought.

[Rule 78 inserted in Gazette 8 May 2000 p.2210.]

Part 13 — The futures industry (Chapter 8 of the Law)

[Heading inserted in Gazette 8 May 2000 p.2210.]

79. Appeal against decision of futures exchange or futures association (s. 1135 of the Law)

For the purposes of section 1135(1) of the Law, a written notice of appeal against a decision of a futures exchange or futures association must —

- (a) be in the form of an originating process;
- (b) state whether the whole, or part only, of the decision is complained of and, if part only, identify that part; and
- (c) state concisely the grounds of appeal.

[Rule 79 inserted in Gazette 8 May 2000 p.2210.]

80. Proceedings against futures organisation to establish claim against fidelity fund (s. 1243 of the Law)

A person who has been given leave by the Court, under section 1243(3) of the Law, to bring a proceeding to establish a claim against the fidelity fund of a futures organisation may bring the claim in the proceeding in which the leave was granted.

[Rule 80 inserted in Gazette 8 May 2000 pp.2210-11.]

Part 14 — Powers of Courts (Part 9.5 of the Law)

[Heading inserted in Gazette 8 May 2000 p.2211.]

81. Appeal from act, omission or decision of administrator, receiver or liquidator, etc. (s. 554A, s. 1321 of the Law)

- (1) All appeals to the Court authorised by the Law must be commenced by an originating process, or interlocutory process, stating —
 - (a) the act, omission or decision complained of;
 - (b) in the case of an appeal against a decision — whether the whole or part only and, if part only, which part of the decision is complained of; and
 - (c) the grounds on which the complaint is based.
- (2) Unless the Law or the Corporations Regulations otherwise provide, the originating process, or interlocutory process, must be filed within —
 - (a) 21 days after the date of the act, omission or decision appealed against; or
 - (b) any further time allowed by the Court.
- (3) The Court may extend the time for filing the originating process, or interlocutory process, either before or after the time for filing expires and whether or not the application for extension is made before the time expires.

- (4) As soon as practicable after filing the originating process, or interlocutory process, and, in any case, at least 5 days before the date fixed for hearing, the person instituting the appeal must serve a copy of the originating process, or interlocutory process, and any supporting affidavit, on each person directly affected by the appeal.
- (5) As soon as practicable after being served with a copy of the originating process, or interlocutory process, and any supporting affidavit, a person whose act, omission or decision is being appealed against must file an affidavit —
- (a) stating the basis on which the act, omission or decision was done or made; and
 - (b) annexing or exhibiting a copy of all relevant documents that have not been put in evidence by the person instituting the appeal.

[Rule 81 inserted in Gazette 8 May 2000 pp.2211-12.]

Part 15 — Proceedings under the ASIC Law

[Heading inserted in Gazette 8 May 2000 p.2212.]

82. Reference to Court of question of law arising at hearing of Commission (s. 61 of the ASIC Law)

Order 31 applies, with any necessary adaptations, to a reference of a question of law arising at a hearing by the Commission to the Court under section 61 of the ASIC Law.

[Rule 82 inserted in Gazette 8 May 2000 p.2212.]

83. Reference to Court of question of law arising at hearing of Corporations and Securities Panel (s. 196 of the ASIC Law)

Order 31 applies, with any necessary adaptations, to a reference of a question of law arising at a hearing by the Corporations and Securities Panel to the Court under section 196 of the ASIC Law.

[Rule 83 inserted in Gazette 8 May 2000 p.2212.]

84. Application for inquiry (s. 70, s. 201, s. 219 of the ASIC Law)

An application for an inquiry under section 70(3), 201(3) or 219(7) of the ASIC Law must be made by filing an originating process seeking an inquiry and orders under the relevant subsection.

[Rule 84 inserted in Gazette 8 May 2000 p.2212.]

Part 16 — Jurisdiction of Masters

[Heading inserted in Gazette 8 May 2000 p.2213.]

85. Jurisdiction of Masters

- (1) A Master may exercise any of the Court's jurisdiction referred to in this Order but may not hear and determine —
 - (a) an appeal to the Court authorised by the Law or the ASIC Law;
 - (b) a matter referred to in column 1 of Part 2 of the Seventh Schedule; or
 - (c) a complaint for an offence.
- (2) A Master, on his or her own motion or on an application by a party, may refer a matter within his or her jurisdiction for hearing and determination by a Judge if the Master is of the opinion that it should be heard and determined by a Judge.
- (3) A Judge, on his or her own motion or on an application by a party, may refer a matter referred under subrule (2) or referred to in column 1 of Part 2 of the Seventh Schedule for hearing and determination by a Master with any directions the Judge thinks fit.
- (4) In exercising his or her jurisdiction under this Order, a Master may exercise any of the powers conferred on the Court or a Judge.

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- (5) This Rule does not prevent a Judge from exercising the jurisdiction it confers on a Master.
- (6) A Master may make an order under section 1322 of the Law if it is incidental to a matter in which the Master otherwise has jurisdiction.
- (7) The descriptions in column 2 of Part 2 of the Seventh Schedule are inserted for convenience only and do not affect the operation of this Order.

[Rule 85 inserted in Gazette 8 May 2000 p.2213.]

Order 81H

[Heading inserted in Gazette 26 November 1999 p.5903.]

Proceedings under the *Surveillance Devices Act 1998*

[Heading inserted in Gazette 26 November 1999 p.5903.]

1. Interpretation

In this Order —

“**the Act**” means the *Surveillance Devices Act 1998*.

[Rule 1 inserted in Gazette 26 November 1999 p.5903.]

2. Application for warrant

- (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 in Gazette 26 November 1999 p.5904.]

3. Reports to Judges

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 in Gazette 26 November 1999 p.5904.]

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4. Application for order allowing publication or communication in the public interest

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 in Gazette 26 November 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 in Gazette 26 November 1999 p.5904.]

6. Practice Directions

- (1) The Chief Justice 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 in Gazette 26 November 1999 p.5904.]

Order 82

Sheriff's Rules

1. Publicity of sale

W.A. O.LXVIII, R.1.

- (1) Subject to the Act and paragraph (2), where the sheriff intends to put up for sale any property taken in execution, he shall cause notice of the time and place and particulars of the property to be given in such manner as appears to him best calculated to give due publicity to such sale.
- (2) Where property referred to in paragraph (1) is of a perishable nature the property may be sold immediately, without notice of sale, if the sheriff considers this action to be appropriate.

[Rule 1 amended in Gazette 26 January 1993 p.829.]

2. Place of sale

Ib. R.2.

The sheriff may cause any property taken in execution to be sold at the place of levy, or elsewhere, as he deems most advantageous.

3. Mode of sale

Cf. W.A. O.LXVIII, R.3.

- (1) Property, whether real or personal, offered for sale by the sheriff by public auction may be sold in one lot or in several lots. Subject to paragraph (2) the sale shall be of the estate, right, title or interest only of the party against whom the writ of execution had been issued in the chattels or land put up for sale.
- (2) With the consent in writing of any other person having estate, right, title or interest in the chattels or land offered for sale by the sheriff, the sale may be also of such estate, right, title or

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interest if the sheriff is of the opinion that such course is desirable in order to obtain a more satisfactory sale under the writ, and such other person, and the judgment creditor, and the judgment debtor have agreed in writing upon the proportion in which the net proceeds of the sale are to be divided.

- (3) Where property, whether real or personal, offered for sale by the sheriff by public auction was not sold at the first auction, the sheriff may, with the written consent of the judgment creditor, offer the property for sale by public auction on a second occasion.

[Rule 3 amended in Gazette 26 January 1993 p.829.]

4. Notice to sheriff not to pay money to execution creditor

ib. R.4.

- (1) Where the sheriff has, by virtue of any writ directed to him, received any moneys, and any person claiming to be interested in those moneys has served on the sheriff a notice requiring him not to pay over those moneys, the sheriff may retain such moneys in his hands, to abide the order of the Court thereon.
- (2) The sheriff may, at the expiration of 4 days next after service of such notice on him, pay over such moneys in pursuance of the writ, unless in the meantime application is made by the party giving such notice to the Court or a Judge, and notice thereof is served on the sheriff.

5. Suspension of execution

ib. R.5.

The sheriff shall not suspend the execution of any writ or process directed to him, except upon an absolute order in writing to that effect lodged with him by the person entitled to the benefit of the same, or his solicitor. Any such person may at any time afterwards withdraw such order, and lodge with the sheriff a written instruction to execute the writ or process.

6. Execution of writs of attachment etc.

Cf. M.C.R. R.263.

- (1) Where a person has been arrested by the sheriff on a writ of attachment, the sheriff shall cause that person to be brought before the Court as soon as practicable to be dealt with as the Court may order.
- (2) Until the person arrested is brought before the Court as required by paragraph (1), he shall be lodged in such prison as the sheriff may direct or shall be otherwise kept in custody by the sheriff.
- (3) The sheriff shall give notice —
 - (a) of the arrest; and
 - (b) of the time and place at which the person arrested is to be dealt with by the Court,

to the party by whom the writ was issued; but this paragraph does not affect the obligation of the sheriff under paragraph (1) to bring the person arrested before the Court as soon as practicable.

- (4) Where a person has been arrested by the sheriff on a civil process, other than a writ of attachment or a warrant issued under section 16 of the *Evidence Act 1906*, the sheriff shall cause that person to be lodged in the prison nearest to the place of his arrest; and subject to any order of the Court, he shall be detained there until discharged in due course of law.
- (5) In this Rule the word “**prison**” has the same meaning as it has in section 3 of the *Prisons Act 1981*.

[Rule 6 inserted in Gazette 29 March 1974 pp.1041-2; erratum in Gazette 5 April 1974 p.1195; amended in Gazette 30 November 1984 p.3954.]

7. Service of process by sheriff

Ib. R.7.

- (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 in Gazette 30 November 1984 p.3952.]

8. Fees where sheriff does not execute process

Ib. R.8.

Where process is directed to any fit person appointed by the Court pursuant to section 164 of the Act, the fees payable in ordinary cases to the sheriff by the person against whom such process is sued out shall be due and payable to the person to whom such process is directed, except the fees for registering the warrant and returning the same.

9. Taxation of fees

Ib. R.9.

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 in Gazette 30 July 1982 p.2947.]

10. Expenses of sale

Ib. R.10.

Where property taken in execution is sold through an auctioneer or agent, the gross proceeds of the sale shall, if the sheriff so requires, be paid over to him by the auctioneer or agent, and the sheriff shall after receipt thereof, or, in case the sheriff and the person liable to pay the fees and charges payable to the sheriff in respect of the execution differ as to the amount of such fees and charges, after such fees and charges have been taxed, pay to the auctioneer or agent the proper charges and expenses due to him in connection with the sale.

11. Deposit on account of fees

Ib. R.11.

- (1) Upon request being made for the execution or 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 except poundage. 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.

12. Fees where execution not proceeded with

Ib. R.12.

Where an execution is withdrawn, satisfied or stopped, the fees payable in respect thereof, including poundage if chargeable, shall be paid by the person issuing the execution or the person at whose instance the sale was stopped, as the case may be.

13. Particulars of arrangement where execution is discontinued

Ib. R.13.

Notwithstanding anything contained in the last preceding Rule, where execution has been levied upon any property and the sheriff upon request has withdrawn from such property, the poundage upon the full amount which the sheriff has been required to levy under the Writ of Execution lodged with him shall become forthwith due and payable by the execution creditor (or his solicitor, as the case may be), unless full particulars of any arrangement reached between the execution creditor and the execution debtor or with any person on behalf of such debtor or of any other circumstances which render the sale unnecessary have been furnished to the sheriff within 14 days of the request to withdraw.

14. Service at a distance

Ib. R.14.

No sheriff's officer shall be compellable to go more than 65 kilometres 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 kilometres be made under item 32 of the Fifth Schedule in any case without the order of a Judge or a Master.

*[Rule 14 amended in Gazette 7 December 1973 p.4489;
30 November 1984 p.3952; 26 August 1994 p.4415.]*

15. Execution of process at a distance

Ib. R.15.

No greater expense shall be chargeable against any party, respecting whom or whose property the execution of process is made, for the extra cost of executing the same at a distance from Perth, than the cost of transmitting the same by the least expensive mode to and from the office or residence of the nearest sheriff's officer, and the prescribed allowance according to the distance of the place where the same is made from the office or residence of such officer; and no such allowance shall be made to any such officer unless he states in his return to the sheriff the number of kilometres that the place of execution is from his office or residence.

[Rule 15 amended in Gazette 7 December 1973 p.4489.]

16. Default in payment of fees

Ib. R.16.

If any solicitor, who has made a request for the execution or 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.

Order 83

Consolidation of pending causes and matters

1. Causes may be consolidated

W.A. O.XVII B, R.1.

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

Ib. R.2.

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

Ib. R.3.

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

Fees

[Heading inserted in Gazette 10 September 1973 p.3428.]

1. Fees to be charged

- (1) Subject to this Order, the fees specified in the Fifth Schedule shall be charged in respect of the matters in relation to which they are specified.
- (2) Except as provided in the Fifth Schedule, a fee shall not be charged in respect of any of the following matters —
 - (a) filing an affidavit;
 - (b) filing a pleading;
 - (c) search by a party;
 - (d) sealing a copy of a document;
 - (e) drawing up, settling or signing a judgment, order or decree;
 - (f) amending a pleading;
 - (g) making a request under these Rules; or
 - (h) filing, depositing, giving, issuing or serving any other document required or permitted by these Rules to be filed, deposited, given, issued or served in connection with proceedings.
- (3) A note to an item in the Fifth Schedule shall have effect according to its tenor as if it were a provision of these Rules.
- (4) Where a fee is payable, the proper officer shall mark the fee on the document filed or, where no document is filed, he shall note on a schedule sufficient particulars of the fee and of the matter to which it relates.
- (5) No fees shall be charged in respect of proceedings under Part VIII of the *Justices Act 1902*.

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- (6) No fee shall be charged on the appointment of an associate to be a Commissioner for Affidavits where such an appointment is for the period during which the appointee holds office as an associate.

*[Rule 1 amended in Gazette 19 April 1991 p.1717;
6 March 1998 p.1177.]*

2. Exemptions

The provisions of this Order shall apply to all proceedings in the Supreme Court in any jurisdiction inherent in or conferred on the Court or a Judge other than —

- (a) criminal proceedings, or appeals under section 183 of the *Justices Act 1902*;
- (b) proceedings under the *Bankruptcy Act 1966* of the Commonwealth;
- (c) proceedings under the *Surveillance Devices Act 1998*;
- (ca) proceedings under the *Witness Protection (Western Australia) Act 1996*;
- (d) proceedings in the Court of Disputed Returns;
- (e) applications for appointment as public notaries;
- (f) returns and copies of, or searches for, returns under the *Newspaper Libel and Registration Act 1884*; or
- (g) proceedings in Prize Courts.

*[Rule 2 amended in Gazette 1 August 1980 p.2550;
26 November 1999 p.5905.]*

3. Fees to be paid before documents etc., filed

Subject to the provisions of this Order, a pleading, application or other document shall not be filed, issued or otherwise dealt with; and no other matter or thing shall be done in the Court or by an officer of the Court, unless the fee (if any) payable upon or in respect of filing, sealing, issuing or otherwise dealing with

that pleading, application or other document or upon or in respect of the doing of that matter or thing, has been paid.

[Rule 3 amended in Gazette 9 August 1996 p.3951.]

4. Principal Registrar to decide disputed fees

If a question arises as to the fee payable or applicable in a particular case, that question shall be determined by the Principal Registrar; but any person affected by the determination of the Principal Registrar may have it reviewed by a Judge in a summary manner.

[Rule 4 amended in Gazette 30 July 1982 p.2947.]

5. Court or Registrar may remit fees

The Court or Registrar may, in a particular case for special reasons, direct —

- (a) that a fee shall not be taken, or that part only of a fee shall be taken, or, if taken, that the whole or part of the fee be remitted; or
- (b) that the payment of the whole or a part of a fee be postponed until such time, and upon such conditions, if any, as the Court or Registrar thinks fit.

[Rule 5 amended in Gazette 14 December 1979 p.3872.]

6. Conventions

Where, by a Convention that applies to the State, it is provided that a fee is not required to be paid in respect of any proceedings, the fees referred to in Rule 1 shall not be taken in respect of those proceedings.

Order 84

General Rules

1. Repealed Orders not revived

W.A. O.LXXII, R.1.

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

Cf. Ib. R.2. Cf. S.A. O.72, R.2. Cf. H.Ct. O.72, R.1.

- (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 paragraph (1) shall be deemed to be regular and sufficient.
- (3) A direction given under paragraph (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.

3. Publication of written reasons for judgment

W.A. O.LXXII, R.3A.

Where a judgment is pronounced in a cause or matter, either by the Full Court 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.

4. Seal and records in Federal Jurisdiction in Bankruptcy

Cf. W.A. O.LXXII, RR.4, 5.

- (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 Royal Arms, 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 in Gazette 26 August 1994 p.4415.]

5. Summary proceedings under s.27 of the Public Trustee Act

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 in Gazette 12 November 1976 p.4277.]

6. Affidavit of claim to purchase money paid into court

Cf. W.A. O.LI, R.17.

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 in Gazette 26 August 1994 p.4415.]

7. Account by solicitor

Ib. R.18.

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. Appeals under *Justices Act 1902* — notification of determination

- (1) The Registrar shall, as soon as is practicable after he has sent a memorandum under section 202 of the *Justices Act 1902* to the clerk of petty sessions, send to that clerk a copy of any reasons given by the Court or the Full Court for its decision.

- (2) The party extracting the order on appeal, must, when filing the order, lodge at the Central Office for the purposes of paragraph (1), an additional copy of such order.
- (3) The Registrars and the Associates of the Judges are prescribed officers for the purpose of section 205(4) of the *Justices Act 1902*.

[Rule 8 amended in Gazette 14 December 1979 p.3872; 19 April 1991 p.1717.]

9. Proceedings under Admiralty Act 1988 of the Commonwealth

- (1) In this Rule, “**Admiralty Rules**” means the Admiralty Rules made under the *Admiralty Act 1890*²⁷ 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 in Gazette 30 March 1990 p.1574; amended in Gazette 30 October 1992 p.5310.]

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**Order 85 — Proceedings to which the *Federal Courts
(State Jurisdiction) Act 1999* applies**

[Heading inserted in Gazette 5 November 1999 p.5629.]

1. Interpretation

- (1) In this Order, unless the contrary intention appears —
“**section**” means a section of the Act;
“**the Act**” means the *Federal Courts (State Jurisdiction)
Act 1999*.

- (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 in Gazette 5 November 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 in Gazette 5 November 1999 p.5629.]

3. When ineffective judgment to be 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) Paragraph (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 in Gazette 5 November 1999 pp.5629-30.]

4. Application for registration

- (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;
 - (b) state the rate of interest (if any) that applies to the amount;
 - (c) state the full name, title, trade or business, and the usual or last known place of abode or business of the judgment

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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 in Gazette 5 November 1999 p.5630.]

5. Ineffective judgments may be registered

The Court is to register an ineffective judgment if satisfied that —

- (a) the judgment concerned is an ineffective judgment;
- (b) the application to register it complies with these Rules;
- (c) the judgment is not wholly satisfied; and
- (d) it is appropriate to do so.

[Rule 5 inserted in Gazette 5 November 1999 pp.5630-1.]

6. Applications for an order under section 10

- (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 Full Court on an application for leave to appeal or on an appeal — by way of appellate proceedings to the Full Court under Order 63 or 63A, as the case requires.
- (2) If an application under paragraph (1)(a) also includes an application under Rule 3(1) —
 - (a) the application under paragraph (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 in Gazette 5 November 1999 p.5631.]

7. Applications under section 11

- (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;
 - (b) exhibits a copy of the relevant order, or of the Commonwealth court's record of the relevant order;
 - (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;
 - (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 in Gazette 5 November 1999 pp.5631-2.]

8. Effect of order under section 11

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;

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- (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 in Gazette 5 November 1999 p.5632.]

[First Schedule omitted under the Reprints Act 1984 s.7(4)(f).]

The Second Schedule

Forms

No. 1

O.5, R.1. GENERAL FORM OF WRIT OF SUMMONS

In the Supreme Court No. of 20 .
of Western Australia.

Between

A.B., Plaintiff,
and
C.D., Defendant.

Elizabeth the Second, by the Grace of God, Queen of Australia and Her
other Realms and Territories, Head of the Commonwealth.

To C.D. of in the State of Western Australia.

We command you, 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 our 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 Chief Justice of
Western Australia the day of 20 .

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.

No. 2

O.5, R.1. WRIT OF SUMMONS INDORSED WITH STATEMENT OF CLAIM

[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.]

No. 3

O.5, R.2. WRIT OF SUMMONS WHICH, OR NOTICE OF WHICH, IS TO BE SERVED OUT OF THE JURISDICTION

(Headings as in No. 1.)

Elizabeth the Second, etc. *(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".

We command you, 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 our 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. When the defendant to be served is outside the Commonwealth of Australia notice of the writ, and not the writ itself, is to be served upon him.

Second Schedule

No. 4

O.5, R.2. NOTICE OF WRIT OF SUMMONS FOR SERVICE OUT OF THE JURISDICTION

[Heading as in action.]

To C.D. of

Take notice that _____ of _____
has commenced an action against you in the Supreme Court of Western
Australia by writ of summons of that Court issued on the _____ day of
20____, which writ is indorsed as follows: —

[Copy the Indorsements.]

And you are required within _____ days after the
receipt of this notice, exclusive of the day of such receipt, to cause an
appearance to be entered for you in the said Court to the said action; and take
notice that in default of your so doing the plaintiff may proceed therein and
judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or
by your solicitor at the Central Office of the Supreme Court at Perth, Western
Australia.

[If the writ is indorsed with a statement of claim add:

If you enter an appearance then, unless a summons for judgment is
served on you in the meantime, you must also file a defence at the Central
Office of the Supreme Court at Perth aforesaid, 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 you
without notice.]

(Signed) A.B. of _____ etc.
or X.Y. of _____ etc.

Solicitor for A.B.

This notice was served by me at _____
on the defendant C.D. on _____ the _____ day
of _____ 20____.

(Signed)
(Address)

No. 5

O.6, R.5. **INDORSEMENTS OF REPRESENTATIVE CAPACITY OF PARTIES**

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. his wife].

The plaintiff's claim is against the defendant A.B. as principal, and against the defendant C.D. as surety, for

Second Schedule

No. 5A

O.11A, R.1.

REQUEST

FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, 15 November 1965.

Identity and address of the Applicant

Address of receiving authority

The undersigned applicant has the honour to transmit — in duplicate — the documents listed below and, in conformity with article 5 of the abovementioned Convention, requests prompt service of one copy thereof on the addressee, i.e.,

(identity and address)

(a) in accordance with the provisions of subparagraph (a) of the first paragraph of article 5 of the Convention*.

(b) in accordance with the following particular method (subparagraph (b) of the first paragraph of article 5)*:

(c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.

The authority is requested to return or to have returned to the applicant a copy of the documents — and of the annexes* — with a certificate as provided on the reverse side.

List of documents
.....
.....
.....
.....
.....
.....
.....
.....
.....

Done at, the

Signature and/or stamp.

*Delete if inappropriate

No. 5B

DEMANDE

AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ÉTRANGER
D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 Novembre 1965.

Identité et adresse du requérant

Adresse de l'autorité destinataire

Le requérant soussigné a l'honneur de faire parvenir — en double exemplaire — à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir:

(identité et adresse)

- a) selon les formes légales (article 5, alinéa premier, lettra a)*.
- b) selon la forme particulière suivante (article 5, alinéa premier, lettre a)*
- c) le cas échéant, par remise simple (article 5, alinéa 2)*.

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte — et de ses annexes* — avec l'attestation figurant au verso.

Énumération des pièces
.....
.....
.....
.....
.....
.....
.....
.....

Fait à, le
Signature et/ou cachet

* Rayer les mentions inutiles.

Second Schedule

No. 5C

O.11B, R.4(3).

REQUEST

FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, 15 November 1965.

Identity and address of the applicant

Address of receiving authority

- 1. The undersigned applicant has the honour to transmit — in duplicate — the documents listed below and, in conformity with article 5 of the abovementioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address) (a) In accordance with the provisions of subparagraph (a) of the first paragraph of article 5 of the Convention*. (b) In accordance with the following particular method (subparagraph (b) of the first paragraph of article 5)*: (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*. 2. The authority is requested to return or to have returned to the applicant a copy of the documents — and of the annexes* — with a certificate as provided on the reverse side. 3. The authority is requested to attempt*/not to attempt* service where the period for entering an appearance has expired. 4. Where the addressee cannot be traced from the address set out in clause 1, additional information regarding the correct address may be obtained from*. 5. Where a certificate referred to in clause 2 is completed by a person or body other than a Central Authority or judicial authority, the certificate is required*/not required* to be countersigned by the Central Authority or a judicial authority.

List of documents *Delete if inappropriate.

Done at, the Signature and/or stamp.

No. 5D

O.11A, R.3(1)(iv).

O.11B, R.4(1)(d).

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, on 15 November, 1965.

Name and address of the requesting authority:

Particulars of the parties*:

JUDICIAL DOCUMENT**

Nature and purpose of the document:

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

Date and place for entering appearance**:

Court which has given judgment**:

Date of judgment**:

Time limits stated in the document**:

EXTRAJUDICIAL DOCUMENT**

Nature and purpose of the document:

Time limits stated in the document**:

* If appropriate, identity and address of the person interested in the transmission of the document.

** Delete if inappropriate.

Second Schedule

No. 5E

O.11A, R.6(a).

O.11B, R.6(1).

Reverse of the request for service

CERTIFICATE

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

(1) that the document has 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 subparagraph (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 documents referred to in the request have 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 applicant is requested to pay or reimburse the expenses detailed in the attached statement*.

Annex II

Documents returned:

In appropriate cases, documents
establishing the service:

Done at, the

Signature and/or stamp.

* Delete if inappropriate

No. 5F

O.11B, R.4(1)(e).

WARNING STATEMENT

identité et adresse du destinataire
identity and address of the addressee

TRÈS IMPORTANT

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES ÉLÉMENTS ESSENTIELS DE L'ACTE VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJECT. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE SOIT DANS VOTRE PAYS SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADDRESSÉES:

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:

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou une des langues officielles de l'État d'origine de l'acte. Les blancs pourraient être remplis soit dans la langue de l'État où le document doit être adressé, soit en langue française, soit en langue anglaise.

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

Second Schedule

O.12, R.2 (2).

No. 6
MEMORANDUM OF APPEARANCE
(Heading as in action)

Enter an appearance for
in this action.

Dated this day of 20 .

(Signed) X.Y. of
Agent for
of

(or) C.D., defendant
in person

* If this address
is beyond
66 kilometres
from the
Supreme Court
at Perth
an address for
service within
66 kilometres thereof
must be given.
* If the writ carried
the indorsements
required by the
*Service and
Execution of Process
Act 1992* of the
Commonwealth the
address must comply
with such
indorsements.

The place of business of X.Y. is*

His address for service is

The address of C.D. is*

His address for service is

O.12, R.10.

No. 7
NOTICE LIMITING DEFENCE
(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.

O.17, R.12(2).

No. 8

NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION

(Heading as in action)

Take notice that A.B. has claimed the goods [*or, certain goods*] [*where only certain goods are claimed here enumerate them*] taken in execution by the sheriff under the writ of execution issued in this action. You are hereby required to admit or dispute the title of the said A.B. to the said goods and give notice thereof in writing to the said sheriff within 4 days from the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said A.B. to the said goods, and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, etc.

(Signed)

sheriff.

To the plaintiff

O.17, R.12(2).

No. 9

NOTICE OF PLAINTIFF OF ADMISSION OR DISPUTE OF TITLE OF CLAIMANT

(Heading as in action)

Take notice that I admit [*or, dispute*] the title of A.B. to the goods [*or, to certain of the goods, namely (set them out)*] seized by you under the execution issued under the judgment in this action.

(Signed) Plaintiff or

Solicitor.

To the sheriff and his officers.

Second Schedule

O.18, R.3(5)

No. 10

(1) NOTICE TO BE INDORSED ON COPY OF COUNTERCLAIM

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.

O.18, R.3

(2) MEMORANDUM OF APPEARANCE TO COUNTERCLAIM

[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.

O.18, R.8(3)

(3) MEMORANDUM OF APPEARANCE OF PERSON ADDED AS DEFENDANT

[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.

O.19, R.1.

No. 11

THIRD PARTY NOTICE (GENERAL FORM)

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.

Second Schedule

O.19, R.1.

No. 12

THIRD PARTY NOTICE WHERE QUESTION OR ISSUE TO BE DETERMINED

[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.

*Fix time in accordance with 0.5, R.11.

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.

Dated, etc, [as in Form No. 11].

O.34, R.1

No. 13

NOTICE OF PAYMENT INTO COURT

(Heading as in action)

Take notice that the defendant has paid \$ into Court.

The said \$ is in satisfaction of [the cause of action] [all causes of action] in respect of which the plaintiff claims [and after taking into account and satisfying the abovenamed defendant's cause of action for in respect of which he counterclaims].

or

The said \$ is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely, [and after taking into account, as above].

or

Of the said \$, \$ is in satisfaction of the plaintiff's cause(s) of action for [and after taking into account, as above] and \$ is in satisfaction of the plaintiff's cause(s) of action for [and after taking into account, as above].

Dated, etc.

(Signed)

Solicitor for the defendant
C.D.

To Mr. X.Y.

Solicitor for the plaintiff.

(To be filled in by the Registrar's Office)

Received the above sum of \$ into court in this action.

Dated, etc.

(Signed)

Accountant.

O.24, R.3(1).

No. 14

NOTICE OF ACCEPTANCE OF SUM PAID INTO COURT

(Heading as in action)

Take notice that the plaintiff accepts the sum of \$ paid by the defendant (C.D.) into Court in satisfaction of the cause(s) of action in respect of which it was paid in and in respect of which the plaintiff claims [against the defendant] [and abandons the other causes of action in respect of which he claims in this action].

Dated the day of 20 .

X.Y. plaintiff's solicitor.

To Mr. P.Q. solicitor for the defendant C.D. (and Mr. R.S. solicitor for the defendant E.F.).

[Form 15 deleted]

O.24, R.6(1)(c)

No. 16

NOTICE OF ACCEPTANCE OF OFFER TO CONSENT TO JUDGMENT

(Heading as in action)

Take notice that the plaintiff accepts the offer of the defendant to consent to judgment for \$ in satisfaction of the plaintiff's cause of action for *(specify the cause or causes of action in respect of which the offer or part of the offer is accepted)*.

Dated the day of 20 .

X.Y. plaintiff's solicitor.

To Mr. P.Q. solicitor for the defendant C.D. (and Mr. R.S. solicitor for the defendant E.F.).

Second Schedule

O.26, R.4(1)

No. 17
LIST OF DOCUMENTS
(Heading as in cause or matter)

List of Documents.

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the abovenamed plaintiff (or defendant) A.B. and which is served in compliance with Order 26 Rule 1(3) [or, the order herein dated the day of

20 .]: —

1. The plaintiff (or defendant) has in his possession, custody or power the documents relating to the matters in question in this action enumerated in Part 1 of the First Schedule hereto.
2. The plaintiff (or defendant) objects to produce the documents enumerated in Part 2 of the said First Schedule on the ground that [*stating the ground of objection*].
3. The plaintiff (or defendant) has had, but has not now, in his possession, custody or power the documents relating to the matters in question in the action enumerated in the Second Schedule hereto.
4. Of the documents in the said Second Schedule, those numbered in that Schedule were last in the plaintiff's (or defendant's) possession, custody or power on (*stating when*) and the remainder on (*stating when*).
5. That [*here state what has become of the last mentioned documents, and in whose possession they are now*].
6. Neither the plaintiff (or defendant), nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in this action, other than the documents enumerated in the First and Second Schedules hereto.

[The Schedules.]

Dated the day of 20 .

O.26, R.8.

Notice to inspect.

Take notice that the documents in the above list, other than those listed in Part 2 of the First Schedule [and the Second Schedule] may be inspected at [the office of the solicitor of the abovenamed [plaintiff] [defendant] (*insert address or as may be*)] on the day of 20 , between the hours of and To the defendant (or plaintiff) C.D.

and his Solicitor.

Served the day of 20 ,

by of solicitor
for (plaintiff) (defendant).

O.26, R.4(3)

No. 18

AFFIDAVIT VERIFYING A LIST OF DOCUMENTS

(Heading as in cause or matter)

I the abovenamed plaintiff (or defendant) A.B., make oath and say as follows: —

1. The statements made by me in paragraphs 1, 3, 4, and 5 of the list of documents now produced and shown to me marked are true.
2. The statements of fact made by me in paragraph 2 of the said list are true.
3. The statements made by me in paragraph 6 of the said list are true to the best of my knowledge, information and belief.

Sworn, etc.

Filed on behalf of the (plaintiff) (*or* defendant).

O.29A, R.12

No. 18A

APPLICATION TO CASE MANAGEMENT REGISTRAR

(Heading as in cause or matter)

The [*party*] applies to a Case Management Registrar —

*for the following *interlocutory order(s)/*case management direction(s):

*to have the following case management direction(s) amended as follows:

*to have the following case management direction(s) cancelled:

- 1.
- 2.

The grounds for this application are:

- 1.
- 2.

A copy of the memorandum referred to in Order 59 Rule 9(1) is attached as Annexure [*A*] to this application.

Dated:

(Signed)

Applicant/Solicitor for applicant

To: [*all other parties*]

O.36, R.12, 16A

No. 22

WRIT OF SUBPOENA TO PRODUCE DOCUMENTS OR OBJECTS
(duces tecum)

(Heading as in cause or matter)

Elizabeth the Second, by the Grace of God, etc.

To: *[name and address of witness]*:

The Supreme Court orders you to appear personally —

- before the Supreme Court *[or as the case requires]*;
- at *[address]*;
- on *[date]* at *[time]*, and every day after that until you are released by the Court,

and to bring with you and produce the following:

[describe documents or objects to be produced].

[Here include the terms of any order made under 0.36, r. 12 (4)]

Instead of appearing personally before the Court you can comply with this subpoena by giving the documents and objects described above and a written list describing them together with a copy of this subpoena to the Registrar at least 2 days before the above date. You can give them to the Registrar by hand or by post or any other means, provided that the Registrar received them at least 2 days before the above date.

Witness

Chief Justice of Western Australia

Issued on *[date]* by *[agent/solicitor]* for the *[party]*.

Second Schedule

No. 22A
[O.36 R.12(1a)]
NOTICE TO WITNESS

THIS NOTICE IS VERY IMPORTANT

**PLEASE READ IT AND THE ATTACHED
DOCUMENT OR DOCUMENTS VERY
CAREFULLY**

**IF YOU HAVE ANY TROUBLE
UNDERSTANDING
THEM YOU SHOULD GET LEGAL ADVICE AS
SOON
AS POSSIBLE**

Attached to this notice is a subpoena (“**the attached subpoena**”) issued by the Supreme Court.

YOUR RIGHTS

You may be able to apply to the Court to set aside or obtain other relief in respect of the attached subpoena. If you would like to make an application you should get legal advice as soon as possible.

YOUR OBLIGATIONS

You must obey the attached subpoena if —

- (a) at the time of service or at some reasonable time before [*date for compliance*] you were offered or given either —
 - (i) enough money to meet your reasonable expenses in obeying it, including any travel and accommodation costs; or
 - (ii) a combination of money, travel tickets and vouchers to meet those expenses;and
- (b) either —
 - (i) you received the attached subpoena at least 14 days before [*date of compliance*]; or

- (ii) you received the attached subpoena less than 14 days before [*date of compliance*] and you received with the attached subpoena a copy of an order made by the Court permitting the attached subpoena to be less than 14 days before [*date of compliance*].

THIS IS MOST IMPORTANT

If you are subject to a restriction on your movements that you might breach if you comply with the attached subpoena, there are some additional actions you must take for your own protection.

The restriction on you could be imposed as —

- (a) conditions of bail;
- (b) conditional release from prison;
- (c) conditions of probation;
- (d) home or periodic detention;
- (e) a community service order, community based order, attendance order or work and development order; or
- (f) some other restriction on your movements imposed by law or by order of a court.

If you are under a restriction of this kind, you must, as soon as practicable after you receive the attached subpoena, inform your supervisor of the service of the attached subpoena. If you are on bail, and your bail is subject to a condition that you report periodically, your supervisor is the police officer or correction service officer you report to. If you are not on bail, or if you are on bail but are not required to report periodically, your supervisor is the person who supervises your compliance with an order or restriction.

Also you must as soon as practicable inform —

The Supreme Court; and

The [*person at whose request the subpoena was issued*],

of the restriction to which you are subject.

You must take all reasonable steps to have the restriction varied so that you can comply with the attached subpoena.

Second Schedule

If the restriction is not varied you must inform —

the Supreme Court; and

The [*person at whose request the subpoena was issued*],

either —

- (a) of the steps you took to have the restriction or obligation varied, and that the restriction or obligation has not been varied; or
- (b) that the law does not permit that variation,

whichever is the case.

No. 22B

[O.36 R.12(1a)]

NOTICE TO WITNESS

THIS NOTICE IS VERY IMPORTANT

**PLEASE READ IT AND THE ATTACHED
DOCUMENT OR DOCUMENTS VERY CAREFULLY**

**IF YOU HAVE ANY TROUBLE UNDERSTANDING
THEM YOU SHOULD ASK TO RECEIVE LEGAL
ADVICE AS SOON AS POSSIBLE**

Attached to this notice is a subpoena (“**the attached subpoena**”) issued by the Supreme Court.

YOUR RIGHTS

The person in charge of the institution or place in which you are held must provide any assistance that you reasonably require to —

- (a) apply to set aside or obtain other relief from the attached subpoena; or
- (b) obtain legal advice.

You may be able to apply to a court to set aside or obtain other relief in respect of the attached subpoena. If you would like to make an application you should ask for assistance to obtain legal advice as soon as possible. If you make an application of this kind, you must, within 24 hours, give a copy to the person in charge of the institution or place in which you are held.

YOUR OBLIGATIONS ON RELEASE FROM CUSTODY

If you are released from the institution or place where you are held before [*date for compliance*], you must obey the attached subpoena yourself if —

- (a) there is sufficient time between when you are released and [*date for compliance*] for it to be reasonably practicable for you to comply with the attached subpoena; and
- (b) within a reasonable time after you were released you were offered or given —
 - (i) enough money to meet your reasonable expenses in obeying it, including any travel and accommodation costs; or
 - (ii) a combination of money, travel tickets and vouchers to meet those expenses.

THIS IS MOST IMPORTANT

If, after your release, you are subject to a restriction on your movements that you might breach if you comply with the attached subpoena, there are some additional actions you must take for your own protection.

The restriction on you could be imposed as —

- (a) conditions of bail;

Second Schedule

- (b) conditional release from prison;
- (c) conditions of probation;
- (d) home or periodic detention;
- (e) a community service order, community based order, attendance order or work and development order; or
- (f) some other restriction on your movements imposed by law or by order of a court.

If you are under a restriction of that kind, you must, as soon as practicable after you are released, inform your supervisor of the service of the attached subpoena. If you are on bail, and your bail is subject to a condition that you report periodically, your supervisor is the police officer or correction service officer you report to. If you are not on bail, or if you are on bail but are not required to report periodically, your supervisor is the person who supervises your compliance with an order or restriction.

Also you must as soon as practicable, inform —

- the Supreme Court; and
- the [*person at whose request the subpoena was issued*],

of the restriction to which you are subject.

You must take all reasonable steps to have the restriction varied so that you can comply with the attached subpoena.

If the restriction is not varied you must inform —

- the Supreme Court; and
- the [*person at whose request the subpoena was issued*],

of the restriction to which you are subject, and —

- (a) of the steps you took to have the restriction varied, and that the restriction has not been varied; or
- (b) that the law does not permit that variation,

whichever is the case.

No. 23

[O.36 R.12(1)]

WRIT OF SUBPOENA: FOR SERVICE IN NEW ZEALAND

(Heading as in cause or matter)

Elizabeth the Second *(as in No. 22)*

To *[names of witnesses]*:

We command you to attend before

at _____ on _____ the _____ day of _____, at the hour of _____ in the _____ noon, and from day to day thereafter until the end of the trial, to give evidence on behalf of the plaintiff *[or defendant]**.

Witness *(as in No. 22)*

Issued *(as in No. 22)*

- Note:
1. Failure to comply with this subpoena may result in your arrest and the imposition of a fine under section 16 of the *Evidence Amendment Act 1994* of New Zealand.
 2. Service of this subpoena is effective only if it is accompanied by a copy of the order giving leave to serve the subpoena in New Zealand and by a Notice to Witness setting out your rights and obligations in relation to this subpoena.

**If duces tecum add:* And we also command you to bring with you and produce at the time and place aforesaid *[here describe the documents or things to be produced]*, unless you produce this subpoena and those documents or things either —

- (a) to the Central Office of the Supreme Court not later than 2 days before the first day on which you are required to attend; or
- (b) to a registry of the High Court of New Zealand not later than 10 days before the first day on which you are required to attend (in which case you must obtain from the Registrar of the High Court of New Zealand a receipt of the documents or things produced and send a copy of the receipt by fax to the Central Office of the Supreme Court together with a copy of the subpoena).

Second Schedule

No. 23A

[O.36 R.12(1a)]

NOTICE TO WITNESS
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.

The subpoena has been issued by the Supreme Court of Western Australia.

The subpoena may be served in New Zealand under New Zealand law (section 14 of the *Evidence Amendment Act 1994* of New Zealand).

This notice:

- sets out your rights relating to the subpoena;
- 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 [*court that issued the subpoena*] 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 solicitors. 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

1. Unless the subpoena is set aside, you must comply with the 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;
- (b) you were given with the subpoena a copy of an order by a Judge giving leave to serve the subpoena in New Zealand;
- (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;
- (d) service of the subpoena complied with any other conditions specified in the order; and
- (e) you are over 18 years of age.

2. If the subpoena only requires you to produce documents or things, it must specify the date on which the documents or things are required for production in the court that issued the subpoena. You may comply with the subpoena by producing the documents or things at a registry of the High Court of New Zealand at least 10 days before the date specified in the subpoena. When you produce the documents or things at the registry you will be required to produce the subpoena and to pay the cost of sending the documents or things to the court that issued the subpoena. 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 THE SUBPOENA

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.

GROUND FOR SETTING ASIDE A SUBPOENA

1. 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;
 - (b) if you complied with the subpoena, you would be liable to be detained for the purpose of serving a sentence;
 - (c) you are being prosecuted or you are liable to prosecution for an offence in Australia;
 - (d) you are liable to the imposition of a penalty in civil proceedings in Australia (other than proceedings under the *Trade Practices Act 1974* of Australia); 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).
2. The grounds on which the Supreme Court may set aside the subpoena include —
 - (a) the evidence you 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) if the subpoena requires you to produce a document or thing and —
 - (i) that document or thing should not be taken out of New Zealand; and

Second Schedule

- (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

1. Application must be made to the Supreme Court.
 2. You may fax your application to that Court on fax number [*fax number of the Supreme Court*].
 3. 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.
 4. The Principal Registrar of the Supreme Court will arrange for service of your application and of any affidavit you lodge with the Court with your application.
 5. 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.
 6. 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.
 7. If, in your application or within a reasonable time after lodging 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 Supreme Court will determine whether video link or telephone will be used.
-

Second Schedule

O.36, R.12(2).

No. 24

PRAECIPE OF SUBPOENA
(Heading as in cause or matter)

Seal writ of subpoena on behalf of
the directed to [*] witnesses returnable .
Dated the day of , 20 .
(Signed)
(Address)
[Agent for of]
Solicitor for the [plaintiff]
[or defendant].

*Insert number of
names in writ of
subpoena.

O.38, R.1.

No. 25

ORDER FOR EXAMINATION OF WITNESS BEFORE TRIAL
(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 in the Central Office of the Supreme Court, and that office 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 .

Second Schedule

O.38A, R.5.

No. 26

ORDER UNDER EVIDENCE ACT 1906

s.110 or 111

[HEADING]

On the application of, and after reading the affidavit ofdated 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;
- (b) appropriately mark for identification any document produced by the witness;
- (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-

Second Schedule

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:
[L.S.]

BY THE COURT
Registrar.

[Form 27 deleted]

Second Schedule

O.38A, R.3.

No. 28

LETTER OF REQUEST

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;
 - (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;
 - (b) any document produced by the person(s) be appropriately marked for identification;
 - (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

Second Schedule

- (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

Second Schedule

O.38, R.3(6).

No. 29

UNDERTAKING AS TO COSTS OF LETTER OF REQUEST

(Heading as in cause or matter)

I [*or we*] hereby undertake to be responsible for all expenses incurred by Her Majesty's 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

O.39, R.3.

No. 30

**ORDER UNDER EVIDENCE ACT 1906, s.117
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 ofand after reading the affidavit
(if any) ofdatedand 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:
[L.S.]

BY THE COURT
Registrar.

Second Schedule

O.39, R.5(2).

No. 31

CERTIFICATE

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.

No. 31A

[O.39A R.4(1)]

APPLICATION FOR SUBPOENA TO BE SET ASIDE

(Heading as in order for leave to issue subpoena)

1. 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 video link or telephone.

Dated:

*[Signature of applicant
or applicant's solicitor]*

*[Applicant's address, telephone
number and, if applicable,
fax number for service.]*

**[Delete if not required]*

No. 31B

[O.39A R.4(8)]

OBJECTION TO DETERMINATION WITHOUT HEARING

(Heading as in order for leave to issue subpoena)

The [*identify person*] objects to the application to set aside the subpoena [*identify subpoena*] being determined without a hearing.

Dated:

[*Signature of applicant
or applicant's solicitor*]

No. 31C

[O.39A R.4(9)]

REQUEST FOR HEARING BY VIDEO LINK OR TELEPHONE

(Heading as in order for leave to issue subpoena)

The applicant requests that the hearing of the application to set aside the subpoena [*identify subpoena*] be held by video link or telephone.

Dated:

[*Signature of applicant
or applicant's solicitor*]

Second Schedule

No. 31D

[O.39A R.5]

CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA

To: The High Court of New Zealand

[Address]

The [name of court that issued the subpoena] respectfully requests you to exercise your powers under section 16 of the *Evidence Amendment Act 1994* of New Zealand in relation to non-compliance by [name of person subpoenaed] with a subpoena issued by the [name of court that issued the subpoena] and for which leave to serve in New Zealand was given by the Supreme Court of Western Australia under the *Evidence and Procedure (New Zealand) Act 1994* on [insert date of leave].

A copy of the subpoena and a copy of the order giving leave to serve in New Zealand are annexed to this certificate.

[Either]

No application to set aside the subpoena either wholly or in part has been made.

[Or]

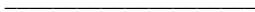
An application to set aside the subpoena was dismissed by order made on [insert date]. A copy of this order is annexed to this certificate.

Dated:

BY THE COURT

[Signature of appropriate officer]

Note: The seal of the court is to be affixed.



O.13, R.2;
O.22, R.2;
O.42, R.1.

No. 32

DEFAULT JUDGMENT IN ACTION FOR LIQUIDATED DEMAND

(Heading as in action)

The _____ day of _____ 20__ .

No appearance having been entered [or no defence having been served] by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff \$ _____ and \$ _____ costs [or costs to be taxed].

The above costs have been taxed and allowed at \$ _____ as appears by the Taxing Officer's certificate dated the _____ day of

20__ .

Second Schedule

O.42, R.1.

No. 39

JUDGMENT AFTER TRIAL BY JUDGE WITHOUT A JURY

(Heading as in action)

Dated and entered the day of 20 .
This action having been tried [*insert dates of trial*] before the
Honourable Mr. Justice at the Supreme Court, Perth
[*or as the case may be*] in the presence of Mr. of counsel for the
plaintiff and Mr. of counsel for the defendant [*or as the case may
be*] and the Judge having on the day of 20 ordered
that judgment as hereinafter provided be entered for the plaintiff [*or
defendant*],

It is adjudged that the defendant do pay to the plaintiff \$ and
his costs of action to be taxed [*or that the plaintiff do pay to the defendant his
costs of defence to be taxed*] [*or as may be the case according to the Judge's
order*].

The above costs, etc. (*as in No.32*)

O.42, R.1.

No. 40

JUDGMENT AFTER TRIAL WITH A JURY

(Heading as in action)

Dated and entered the day of 20 .
This action having been tried [*insert dates of trial*] before the
Honourable Mr. Justice with a jury at the Supreme Court, Perth
[*or as the case may be*] in the presence of Mr. of counsel for
the plaintiff and Mr. of counsel for the defendant [*or as the
case may be*] and the jury having found [*state findings as in officer's
certificate*] and the said Mr. Justice having on the day
of 20 ordered that judgment as hereinafter provided
be entered for the plaintiff [*or defendant*],

It is adjudged (*etc. as in No. 39*).

O.42, R.1.

No. 41

**JUDGMENT AFTER TRIAL BEFORE MASTER OR
SPECIAL REFEREE**

(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*)

O.32, R.7;
O.42, R.1.

No. 42

JUDGMENT AFTER DECISION OF PRELIMINARY ISSUE

(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.*

O.23, R.2.

No. 43

JUDGMENT FOR DEFENDANT'S COSTS ON DISCONTINUANCE

(Heading as in action)

The day of 20 .
The plaintiff having by a notice in writing dated the 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.

O.24, R.3(8).

No. 44

JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT

(Heading as in action)

This day of 20 .
The defendant having paid into court in this action the sum of \$ in satisfaction of the plaintiff's cause(s) of action [*or in satisfaction of the plaintiff's cause of action for*], and the plaintiff having by his notice dated the day of 20 , accepted that sum in satisfaction of his cause(s) of action [*or in satisfaction of his cause of action for and abandoned his other cause(s) of action*], and the plaintiff's costs herein having being taxed and allowed at \$ as appears by the Taxing Officer's certificate dated the day of 20 .
It is this day adjudged that the defendant do pay to the plaintiff \$ the said taxed costs.

O.47, R.5.

No. 46

FIERI FACIAS ON ORDER FOR COSTS

(Heading as in cause or matter)

Elizabeth the Second *(as in Form No. 45)*.

To the sheriff, Greeting:

Whereas in the abovenamed cause [*or matter*] it was on the day of 20 ordered that the C.D. do pay the A.B. costs to be taxed, which costs have been taxed and allowed at \$ as appears by the Taxing Officer's certificate dated the day of 20 ,

We command you that of the real and personal estate of C.D. authorised by law to be seized in execution you cause to be made the sum of \$ and \$ for costs of execution, and also interest on \$ at the rate of \$ per cent. per annum from the day of 20 , until payment together with sheriff's poundage, officers' fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said order the amount levied in respect of the said sum and interest.

And we also *(as in Form No. 45)*.

Witness *(as in Form No. 45)*.

This writ was issued *(as in Form No. 45)*.

O.47, R.5.

No. 47

WRIT OF VENDITIONI EXPONAS

(Heading as in action)

Elizabeth the Second *(as in Form No. 45)*.

To the sheriff, Greeting:

Whereas by our writ we lately commanded you that of the real and personal estate of C.D. [*here recite the fieri facias to the end*]. And on the day of 20 you made a return that by virtue of the said writ to you directed you had taken real and personal estate of the said C.D. to the value of the money and interest aforesaid, which said real and a personal estate remained in your hands unsold for want of buyers. Therefore, we being desirous that the said A.B. should be satisfied his money and interest aforesaid, command you that you expose for sale and sell, or cause to be sold, the real and personal estate of the said C.D., by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and that you pay A.B. the money arising from such sale.

Witness, etc. *(as in Form No.45)*.

This writ was issued *(as in Form No. 45)*.

Second Schedule

O.47, R.5.

No. 48

WRIT OF POSSESSION

(Heading as in action)

Elizabeth the Second *(as in Form No. 45)*.

To the sheriff, Greeting:

Whereas in the abovenamed action it was on the day of 20
adjudged [*or ordered*] that the defendant, C.D. do give the plaintiff A.B.
possession of [*describe the land delivery of which has been adjudged or*
ordered] and do pay him [\$ and] \$ costs [*or costs to be taxed,*
which costs have been taxed and allowed at \$ as appears by the
Taxing Officer's certificate dated the day of 20 .]:

We command you that you enter the said land and, without delay, you
cause the said A.B. to have possession of it.

And We also command you that of the real and personal estate of C.D.
(remainder as in Form No. 45).

O.47, R. 5.

No. 49

WRIT OF DELIVERY (DELIVERY OF GOODS, DAMAGES AND COSTS)

(Heading as in action)

Elizabeth the Second *(as in Form No. 45)*.

To the sheriff, Greeting:

Whereas in the abovenamed action it was on the day of
20 adjudged [*or ordered*] that the defendant C.D. do deliver to the plaintiff
A.B. the following goods, namely [*describe the goods delivery of which has
been adjudged or ordered*] [and \$ damages] and \$ costs [*or costs*
to be taxed, which costs have been taxed and allowed at \$ as appears by
the certificate of the Taxing Officer dated the day of 20]:

We command you that without delay you cause the said goods to be
delivered to A.B. and that of the real and personal estate of C.D. authorised by
law to be seized in execution you cause to be made the sums of \$ and
\$ for costs of execution and also interest on \$ at the rate
of \$ per cent. per annum from the day of 20 ,
until payment together with sheriff's poundage, officers' fees, costs of levying
and all other legal incidental expenses and that immediately after execution of
this writ you pay A.B. in pursuance of the said judgment [*or order*] the amount
levied in respect of the said sums and interest.

And we also command you that you indorse (*remainder as in
Form No. 45*).

Second Schedule

O.47, R.5.

No. 50

**WRIT OF DELIVERY (DELIVERY OF GOODS OR VALUE,
DAMAGES, ETC.)**

(Heading as in action)

Elizabeth the Second *(as in Form No. 45)*.

To the sheriff, Greeting:

Whereas in the abovenamed action it was on the day of
20 adjudged [*or ordered*] that the defendant C.D. do deliver to the plaintiff
A.B. the following goods namely [*describe the goods delivery of which has
been adjudged or ordered*] or do pay him \$ being the assessed value of
the said goods, [*and \$ damages*] and \$ costs [*or costs to be taxed,*
which costs have been taxed and allowed at \$ as appears by the
certificate of the Taxing Officer dated the day of 20 .]

We command you that without delay you cause the said goods to be
delivered to A.B. and that if possession of the said goods cannot be obtained
by you, you cause to be made of the real and personal estate of C.D. authorised
by law to be seized in execution \$ the assessed value of the said goods
and pay it to A.B.

And we also command you that of the said real and personal estate of
C.D. you cause to be made the sums of \$ for [*damages and*] costs
and \$ for costs of execution and also interest on \$ at the
rate of \$ per cent. per annum from the of 20 , until
payment together with sheriff's poundage, officers' fees costs of levying and
all other legal incidental expenses and that immediately after execution of this
writ you pay A.B. in pursuance of the said judgment [*or order*] the amount
levied in respect of the said sums and interest.

And we also command you that you indorse (*remainder as in
Form No. 45*).

O.47, R.5.

No. 51

WRIT OF ATTACHMENT
(Heading as in cause or matter)

Elizabeth the Second (as in Form No. 45).

To the sheriff, Greeting:

We command you to attach C.D. so as to have him before us in our Supreme Court wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf;

and hereof fail not, and bring this writ with you.

Witness (as in Form No. 45).

This writ was issued (as in Form No. 45).

O.47, R.5.

No. 52

WRIT OF SEQUESTRATION
(Heading as in cause or matter)

Elizabeth the Second (as in Form No. 45).

To [names of not less than 4 commissioners], Greetings:

Whereas in the abovenamed action [or matter] in our Supreme Court it was on the day of 20 adjudged [or ordered] that C.D. should [pay into Court the sum of \$ or as the case may be]:

Know ye, therefore, that we, in confidence of your prudence and fidelity, do by this writ authorise and command you, or any two or three of you, to enter upon and take possession of all the real and personal estate of the said C.D. and to collect, receive and get into your hands the rents and profits of his real estate and all his personal estate and keep the same under sequestration in your hands until the said C.D. shall [pay into Court to the credit of the said action [or matter] the sum of \$ or as the case may be] and clear his contempt and our said Court make other order to the contrary.

Witness (as in Form No. 45).

This writ was issued (as in Form No. 45).

O.49, R.4.

No. 54

**GARNISHEE ORDER ABSOLUTE WHERE GARNISHEE OWES
MORE THAN JUDGMENT DEBT**

(Heading as in Form No. 53)

Before _____ in Chambers.

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of _____, filed herein and the order *nisi* made herein, dated the _____ day of _____, 20____, whereby it was ordered that all debts owing or accruing due from the abovenamed garnishee to the abovenamed judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Supreme Court on the _____ day of 20____, for the sum of \$ _____ and \$ _____ costs [together with the costs of the garnishee proceedings], on which judgment the sum of \$ _____ remains due and unpaid:

It is ordered that the said garnishee do forthwith pay to the said judgment creditor \$ _____ being so much of the debt due from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt and costs, together with \$ _____, the costs of the garnishee proceedings, and that in default thereof execution may issue for the same and that the said garnishee be at liberty to retain \$ _____ for his costs of this application out of the balance of the debt due from him to the judgment debtor.

Dated the _____ day of _____ 20____.

Second Schedule

O.49, R.4.

No. 55

**GARNISHEE ORDER ABSOLUTE WHERE GARNISHEE OWES
LESS THAN JUDGMENT DEBT**

(Heading as in Form No. 53)

Before _____ in Chambers.

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of _____ filed herein and the order nisi made herein dated the _____ day of _____, 20____, whereby it was ordered that all debts owing or accruing due from the abovenamed garnishee to the abovenamed judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Supreme Court on the _____ day of _____, 20____, for the sum of \$ _____ debt, and \$ _____ costs [together with the costs of the garnishee proceedings], on which judgment the sum of \$ _____ remained due and unpaid:

It is ordered that the said garnishee [after deducting therefrom \$ _____ for his costs of this application] do forthwith pay to the said judgment creditor \$ _____ the debt due from the said garnishee to the said judgment debtor and that in default thereof execution may issue for the same. And that the sum of \$ _____, the costs of the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.

Dated the _____ day of _____, 20____.

O.50, R.1(2).

No. 56

ORDER NISI CHARGING STOCK OR SHARES

(Heading as in cause or matter)

Before _____ in Chambers.

Upon hearing _____ and upon reading the affidavit of _____ filed herein the _____ day of _____ 20 _____, whereby it appears that the plaintiff recovered a judgment against the defendant on _____ 20 _____, for the sum of \$ _____ and \$ _____ costs, that the said defendant is still indebted to the plaintiff in the said sums so recovered and that the defendant is possessed of [*set out the stock or shares sought to be charged*]:

It is ordered that unless sufficient cause to the contrary be shown before a Judge in Chambers at the Supreme Court, Barrack Street, Perth, on _____ day the _____ day of _____ 20 _____, at _____ o'clock in the _____ noon, the defendant's interest in the said stock [*or shares*] shall and that it in the meantime do, stand charged with the payment of the abovementioned amount due on the said judgment together with the costs of this application.

And it is further ordered and directed that the defendant be restrained and an injunction is hereby granted restraining him until this order shall be discharged or until the sums abovementioned shall be paid or satisfied, from selling, transferring or otherwise dealing with the property hereby charged.

Dated the _____ day of _____ 20 _____.

O.50, R.1(2)

No. 57

ORDER ABSOLUTE CHARGING STOCK OR SHARES

(Heading as in cause or matter)

Before _____ in Chambers.

Upon hearing _____ and upon reading the affidavits of _____ filed herein the _____ day of _____ 20 _____, and the order nisi made herein on the _____ day of _____ 20 _____:

It is ordered that the interest of the defendant C.D. in the sum of \$ _____ stock [*or shares* in the _____ Co. Ltd., *or as the case may be*] now standing in the name of the said defendant [*or as the case may be*] stand charged with the payment of \$ _____ the amount due from the defendant to the plaintiff on the judgment of the Supreme Court of Western Australia dated the _____ day of _____ 20 _____ [and interest thereon at the rate of \$ _____ per cent. per annum from the said date until payment] together with \$ _____ the costs of this application, the said costs to be added to the judgment debt.

And it is further ordered (*as in Form No. 56 above*).

Second Schedule

O.50, R.3.

No. 58

AFFIDAVIT AS TO STOCK UNDER ORDER 50

In the matter of [*state the will, settlement or other document under which the deponent's interest arises giving the date and other particulars sufficient to identify the document*]

and

In the matter of Order 50 Rule 3 of the *Rules of the Supreme Court 1971*.

I, _____ of _____, make oath and say that according to the best of my knowledge, information, and belief, I am [*or if the affidavit is made by the solicitor, A.B., of _____ is*] beneficially interested in the stock comprised in the [*settlement, will, etc.*] abovementioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

Sworn, etc.

This affidavit is filed on behalf of A.B., whose address is [*state address for service*].

O.50, R.3.

No. 59

NOTICE AS TO STOCK UNDER ORDER 50

(*Heading as in Form No. 58*)

To the [*here add the name of the Company*].

Take notice that the stock comprised in and now subject to the trusts of the [*settlement, will etc.*] referred to in the affidavit to which this notice is annexed consists of the following (that is to say) [*here specify the stock*].

This notice is intended to stop the transfer of the stock only, and not the receipts of dividends [*or, the receipt of the dividends on the stock as well as the transfer of the stock*].

(Signed) A.B.

whose address for service is

Note: This notice and the affidavit (Form No. 58) must be signed by the same person. Where shares in more than one company are concerned a separate notice and affidavit must be filed in respect of each company. An address for service within 66 kilometres from the Supreme Court at Perth must be given.

O.51, R.1.

No. 60

SUMMONS FOR APPOINTMENT OF RECEIVER

(Heading as in action)

Let the defendant C.D. attend [the Master in Chambers, Supreme Court, 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*] in or towards satisfaction of the moneys and interest due to the plaintiff under the judgment in this action dated the day of 20 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].

O.51, R.1.

No. 61

ORDER DIRECTING SUMMONS FOR APPOINTMENT OF RECEIVER AND GRANTING INJUNCTION MEANWHILE

(Heading as in action)

Before in Chambers.

Upon reading the affidavit of filed
the day of 20 :

Let the defendant C.D. attend [the Master in Chambers, Supreme Court, 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, on the usual terms to receive the rents, profits, and moneys receivable in respect of the said defendant's interest in the following property namely [*describe the property*] in or towards satisfaction of the sum of \$ debt and \$ costs, and interest on the said sums at the rate of \$ per cent. per annum from the day of 20 due under the judgment in this action dated the day of 20 .

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 .

Second Schedule

O.51, R.1.

No. 62
RECEIVER ORDER (INTERIM)
(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 .

Second Schedule

O.54, R.5

No. 64

NOTICE OF ORIGINATING MOTION

In the Supreme Court of Western Australia. No. of 20 .

In the matter of

and

In the matter of

TAKE notice that the [Full Court of the] Supreme Court will be moved [before His Honour Mr. Justice.] at [Perth] on day the day of 20 at the hour of in the noon, or so soon thereafter as counsel can be heard, by counsel on behalf of A.B. for an order that [or, for the following relief, namely].

And that the costs of and incidental to this [application] may be paid by

[And further take notice that the grounds of this [application] are

:]

Dated the day of 20 .

(Signed)

C.D. of [agent for of] Solicitor for the abovenamed [applicant].

This notice was taken out by of Solicitor for A.B. of , whose address for service is

O.54, R.5.

No. 65

NOTICE OF MOTION

(Heading as in cause or matter)

TAKE notice that [pursuant to the leave of given on the day of 20 .] the Court [or Mr. Justice of] 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

O.55, R.7(4).

No. 66
ORDER OF COMMITTAL
(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____.

O.56, R.14.

No. 67
CERTIORARI (GENERAL)

No. _____ of 20____.

In the Supreme Court
of Western Australia

The Queen against A.B., Stipendiary
Magistrate sitting as a Court of
Summary Jurisdiction at Perth [*or as
the case may be*].

Ex parte C.D.

Elizabeth the Second, etc.

To _____ . Greetings:

We, willing for certain causes to be certified of _____ command you that you send to us in our Supreme Court on the _____ day of _____, the _____ aforesaid, with all things touching the same, as fully and entirely as they remain in _____, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, etc.

This Writ was issued by, etc.

Second Schedule

O.56, R.14.
Local Courts Act
1904, s.114.

No. 68

CERTIORARI TO LOCAL COURT
(Heading as in Form No. 67)

Elizabeth the Second, etc.

To the Magistrate of the Local Court holden at

Greeting:

We, will for certain causes to be certified of a plaint levied in our Court before you against _____ at the suit of _____ command you that you send to us forthwith in our Supreme Court the said plaint with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, etc.

This writ was issued by, etc.

O.56, R.16.

No. 69
MANDAMUS

(Heading as in Form No. 67)

Elizabeth the Second, etc.

To _____ of _____ . Greeting:

Whereas by [*here recite Act of Parliament, Council or Charter if the act required to be done is founded on either one or the other*]. And whereas We have been given to understand and be informed in Our Supreme Court before Us that [*insert necessary inducements and averments*]. And you the said _____ were then and there required by [*insert demand*] but that you the said _____ well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since _____ in contempt of Us and to the great damage and grievance of _____ as We have been informed from their complaint made to Us. Whereupon We being willing that due and speedy justice should be done in the premises as it is reasonable do command you the said _____ and every of you firmly enjoining you that you [*insert command*] or that you show Us cause to the contrary thereof, lest by your default the same complaint should be repeated to Us, and how you shall have executed this Our Writ make known to Us in Our said Court forthwith then returning to Us this Our said Writ, and this you are not to omit.

Witness, _____ Chief Justice, the _____ day
of _____ in the _____ year of Our reign.

By the Court,
(Signed)

O.56, R.32(2).

No. 70

WRIT OF PROCEDENDO

(Heading as in Form No. 67)

Elizabeth the Second, etc.

To [the persons to whom the writ of prohibition is directed]

Greeting:

Whereas by Our Writ we lately commanded you [*recite writ of prohibition*]:

We do now command you that you do proceed in the said cause [*or as the case may be*] with the expedition which to you shall seem right, notwithstanding Our Writ so sent to you as aforesaid.

Witness, etc.

This writ was issued by, etc.

O.56, R33(2).

No. 71

PROHIBITION

(Heading as in Form No. 67)

Elizabeth the Second, by the Grace of God, etc.

To the [Magistrate of the Local Court holden at] and to [*name of plaintiff*] of

Greeting:

Whereas we have been given to understand that you the said

have [entered a plaint against] C.D. in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [*state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness, etc.

This writ was issued by, etc.

Second Schedule

O.57, R.7(4).

No. 72

NOTICE TO BE SERVED WITH WRIT OF HABEAS CORPUS

In the Supreme Court
of Western Australia.

[If in a cause already begun, here insert the title, not otherwise.]

Whereas this Court [*or* the Honourable, Mr. Justice] has granted a writ of habeas corpus directed to [*or* other person having the custody of , *if so*] commanding him to have the body of A.B. before the said Court [*or* before a Judge in Chambers] at the Supreme Court, Perth, on the day and at the time specified in the notice together with the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the body of the said A.B. before this Court [*or* before the Judge aforesaid] on day the day of 20 at o'clock in the noon and to make a return to the said writ. In default thereof the said Court will then, or so soon thereafter as counsel can be heard, be moved to commit you to prison for your contempt in not obeying the said writ [*or if in vacation* application will then be made to one of the Judges of the said Court for a warrant for your arrest in order that you may be held to bail to answer for your contempt in not obeying the said writ].

Dated, etc.

(Signed)

Solicitor for

To [*the persons to whom the writ is directed and any other person upon whom it may be deemed necessary to serve the writ*].

O.57, R.10

No. 73

WRIT OF HABEAS CORPUS AD SUBJICIENDUM

In the Supreme Court
of Western Australia.

The Queen against C.D.
Ex parte A.B

Elizabeth the Second, etc.

To C.D. of _____, Greeting:

We command you that you have in the Supreme Court [*or* before a Judge in Chambers at the Supreme Court] at Perth on the day and at the time specified in the notice served with this writ, the body of A.B. being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that Our said Court [*or* Judge] may then and there examine and determine whether such cause is legal, and have you there then this writ.

Witness, etc.

Registrar.

Indorsement

By order of the Court [*or* of the Hon. Mr. Justice _____].
dated _____

This writ was issued by, etc.

Second Schedule

O.58, R.14

No. 74

ORIGINATING SUMMONS — APPEARANCE REQUIRED

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 the Judge [*or* Master] sitting to hear such summons 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 Judge [*or* Master] sitting to hear such summons at such time and place as shall hereafter be fixed for such hearing, such order will be made and proceedings taken as the Judge [*or* Master] may think just and expedient.

O.58, R.14.

No. 75

ORIGINATING SUMMONS — APPEARANCE NOT REQUIRED
(Hearing as in Form No. 74)

Let C.D. of _____ attend before the Judge [*or* Master] in Chambers at 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 Judge [*or* Master] may think just and expedient.

O.58, R.19.

No. 76

NOTICE OF APPOINTMENT TO HEAR ORIGINATING SUMMONS
(Heading as in Form No. 74)

To [*name of defendant*] of _____

Take notice that the originating summons issued herein on the _____ day of _____ 20____, will be heard by the Judge [*or* Master] in Chambers at 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 Judge [*or* Master] may think just and expedient.

Dated, etc.

(Signed)
Solicitor for the plaintiff.

Second Schedule

O.59, R.4(1).

No. 77

SUMMONS (GENERAL FORM)

In the Supreme Court No. of 20 .
of Western Australia.
Between Plaintiff,
and
Defendant.

Let all parties concerned attend the Judge [*or* Master] in Chambers 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

O.59, R.10.

No. 78

ORDER (GENERAL FORM)

In the Supreme Court No. of 20 .
of Western Australia
Between
A.B. Plaintiff,
and
C.D. Defendant.

Before the Honourable Mr. Justice [*or* Master] in
Chambers.

UPON THE APPLICATION of the
by summons dated and UPON HEARING
and UPON READING the affidavit of filed herein
IT IS ORDERED that AND that the
costs of this application be

Dated the day of 20 .

O.60, R.7.

No. 79

SUMMONS BY MASTER

In the Supreme Court No. of 20
of Western Australia.
In the matter of the estate of A.B. late of, etc.

or

Between

C.D.

Plaintiff,

and

E.F.

Defendant.

The defendant E.F., [or G.H., of, etc.] is hereby summoned to attend at my Chambers, at the Supreme Court on the day of , at o'clock in the noon, to be examined [or to be examined as a witness] on the part of the , for the purpose of the proceedings directed by Mr. Justice to be taken before him [or me].

Dated the day of , 20 .

[Master.]

This summons was taken out by
of , Solicitors for

O.61, R.3(3)

No. 80

NOTICE OF JUDGMENT OR ORDER

(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

Second Schedule

O.61, R.15(2).

No. 81

ADVERTISEMENT FOR CREDITORS

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).

O.61, R.15(2).

No. 82

ADVERTISEMENT FOR CLAIMANTS OTHER THAN CREDITORS

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 Master in his Chambers, Supreme Court, 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.]

Second Schedule

No. 82A

APPLICATION FOR LEAVE TO APPEAL

No.....of 20.....

In the Matter of the *Justices Act 1902*

and

In the Matter of the Complaint(s) No(s).....
of 20.....in the Court of Petty Sessions at.....

BETWEEN

Applicant

and

Respondent

APPLICATION FOR LEAVE TO APPEAL

1. The applicant applies to the Judge in Chambers on the day
of 20 at o'clock in the
..... noon for leave to appeal from [specify part or the whole] of the decision of
..... [JPs or SM] given on the abovementioned complaint(s) in the Court of
Petty Sessions at on the day of
20 whereby the [Justices or learned Magistrate] [found the complaint(s)
proven or sentenced the applicant to].

2. The applicant intends to rely on the following grounds —
.....
.....
.....

3. The applicant seeks the following orders —
.....
.....
.....

4. The applicant is not in custody [is in custody, held at Prison].

Dated the day of 20

(Solicitor or Applicant)

Second Schedule

No. 82AA

ORDER FOR LEAVE TO APPEAL

No.....of 20.....

In the Matter of the *Justices Act 1902*

and

In the Matter of the Complaint(s) No(s).....
of 20.....in the Court of Petty Sessions at.....

BETWEEN

Applicant

and

Respondent

ORDER FOR LEAVE TO APPEAL

Upon the application of the defendant/complainant dated the day
of 20 IT IS ORDERED THAT —

1. The applicant have leave to appeal from [specify part or the whole] of the decision of [JPs or SM] given on the abovementioned complaint(s) in the Court of Petty Sessions at on the day of 20 whereby the [Justices *or* learned Magistrate] [found the complaint(s) proven *or* sentenced the applicant to] the grounds for appeal being as follows —
.....
.....
.....
2. The appeal be heard by a single Judge.
3. Within days of this order the applicant serve on the respondent a copy of the application for leave to appeal, the affidavit(s) filed in support of the application and a copy of this order.
4. Within days of this order the applicant enter the appeal for hearing.
5. Within 7 days after the appeal has been entered for hearing the applicant, on notice to the respondent, attend before the Listing Coordinator to fix a date for hearing of the appeal.
6. At least 7 days before the date fixed for hearing the appeal the applicant file books of appeal containing all material required by the Registrar.

Dated the day of 20

Second Schedule

O.65A, R.10(a)

No. 82B

APPLICATION FOR RE-INSTATEMENT OF APPEAL

No.....of 20.....

In the Matter of the *Justices Act 1902*

and

In the Matter of the Complaint(s) No(s)of 20.....[or as the case may be] in the Court of Petty Sessions at..... between and.....

BETWEEN

Applicant

and

Respondent

APPLICATION FOR RE-INSTATEMENT OF APPEAL

1. The applicant applies pursuant to section 206(1) of the *Justices Act 1902* to the Judge in chambers on theday of20 at..... o'clock in thenoon to re-instate this appeal.

2. The grounds of the application are
.....
.....

Dated theday of.....20.....

(Signed, Solicitor or Applicant).

Second Schedule

This writ was issued by the plaintiff in person, who resides at _____, and whose address for service is at the same place (or at _____).

or,
This writ was issued by X.Y., of _____, whose address for service is at _____ solicitor for the plaintiff, who resides at _____

or,
This writ was issued by V.W., of _____, whose address for service is _____, agent for X.Y., of _____ solicitor for the plaintiff, who resides at _____

[Mention the locality and situation of the plaintiff's residence in such a manner as to enable it to be easily discovered.]

This writ was served by me by [state mode of service] on the defendant _____ at _____ on _____ day _____ the day of _____ 20 _____.

Indorsed the _____ day of _____ 20 _____.

(Signed)
(Address)

NOTE: If the action is by the Crown, instead of the plaintiff's name put "Our Sovereign Lady the Queen" adding if necessary, "in Her Office of Admiralty".

For forms of indorsement of claim in Admiralty actions refer to Form No. 7 of the Vice-Admiralty Rules.

WRIT OF SUMMONS IN ADMIRALTY ACTION IN PERSONAM

NOTE: Subject to Order 74²⁷ Rule 2, Form No. 1 should be used, inserting in the heading after the words "In the Supreme Court of Western Australia" the words "Admiralty Jurisdiction".

Second Schedule

O.74, R.3(1).

No. 84

(1) WARRANT OF ARREST IN ADMIRALTY ACTION *IN REM*

(Heading as in action)

Elizabeth the Second, etc. *(as in Form No.1)*

TO the Marshal in Admiralty of Our Supreme Court of Western Australia, and to all and singular his substitutes, Greeting:

We hereby command you to arrest the ship _____ of the port of _____ [and the cargo now or lately laden therein, together with the freight due for the transportation thereof,] *or* [and the freight due for the transportation of the cargo now or lately laden therein,] and to keep the same under safe arrest until you shall receive further orders from Us.

Witness *(as in Form No. 1)*

Registrar.

The plaintiff's claim is for *(copy from the writ)*.

Taken out by _____ (solicitors for) the _____.

CERTIFICATE OF SERVICE

This warrant was served by [state by whom and in what mode service was effected] on _____ the _____ day of _____ 20

(Signed)

Marshal.

(2) PRAECIPE FOR WARRANT OF ARREST

(Heading as in action)

We _____ of _____ (solicitors for) the plaintiffs request a warrant to arrest [description of property, giving name, if a ship].

Dated the _____ day of _____ 20 _____.

(Signed)

O.74, R.13.

No. 85
BAIL BOND

(Heading as in action)

Whereas this Admiralty action *in rem* against the abovementioned property is pending in the Supreme Court of Western Australia and the parties to the above action are the abovementioned plaintiffs and defendants.

Now, therefore, we, A.B. of _____ and C.D. of _____ hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the abovementioned defendants [*or plaintiffs, in the case of a counterclaim*] do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission or liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, goods and chattels, for the amount unpaid or an amount of _____ dollars whichever is the less.

(Signed)

This bail bond was signed by the said A.B. and C.D., the sureties, the day of _____ 20_____ .

Before me

A Commissioner for Affidavits in the Supreme Court of Western Australia.

Second Schedule

O.74, R.16(1).

No. 86

RELEASE

(Heading as in action)

Elizabeth the Second, etc. *(as in Form No. 1)*.

To the Marshal in Admiralty of Our Supreme Court of Western Australia, and to all and singular his substitutes, Greeting:

Whereas in this action we did command you to arrest [*state name and nature of property arrested*] and to keep the same under safe arrest until you should receive further orders from us.

Now we do hereby command you to release the said from the arrest effected by virtue of Our warrant in this action upon payment being made to you of all costs, charges, and expenses due in connection with the care and custody of the property while under arrest.

Witness *(as in Form No. 1)*

Taken out by
the

Registrar.
(Solicitors for)

Marshal's indorsement

On the day of 20 , the was
released from arrest pursuant to this Instrument.

(Signed)

Substitute of Marshal in Admiralty.

O.74, R.16(5).

No. 87

PRAECIPE FOR ISSUE OF RELEASE

(Heading as in action)

We of (solicitors for) the plaintiffs
[or defendants] in this action against [*describe property giving name, if a
ship*], now under arrest by virtue of a warrant issued out of the Supreme Court
of Western Australia in its Admiralty Jurisdiction, request the issue of a
release with respect to the said

Dated the day of 20 .
(Signed)

O.74, R.17.

No. 88

PRAECIPE FOR CAVEAT AGAINST RELEASE AND PAYMENT

(Description of property giving name, if a ship)

We of (solicitors for) of
request a caveat against the issue of a release with respect to [*describe
property giving name, if a ship*] now under arrest and, in the event of the said
property being sold by order of the Court, a caveat against payment out of
court of the proceeds of sale.

Dated the day of 20 .

O.74, R.18.

No. 89

PRAECIPE FOR CAVEAT AGAINST ARREST

(Description of property giving name, if a ship)

We of [solicitors
for of]
request a caveat against the arrest of [*describe property giving name, if a ship*]
and hereby undertake to enter an appearance in any action that may be
commenced in the Supreme Court of Western Australia in its Admiralty
Jurisdiction against the said and, within 3 days after receiving notice
that such an action has been commenced, to give bail in the action in a sum not
exceeding \$ or to pay that sum into court. We consent that
the writ of summons and any other document in the action may be left for us at

Dated the day of 20 .

Second Schedule

O.74, R.22.

No. 90

PRAECIPE FOR WITHDRAWAL OF CAVEAT

(Description of property giving name, if a ship)

We of request
[solicitors for] of day
that the caveat [*state nature of caveat*] entered on the
of 20 on behalf of be
withdrawn.

Dated the day of 20 .
(Signed)

O.74, R.46.

No. 91

COMMISSION OF APPRAISEMENT

(Heading as in action)

Elizabeth the Second, etc. (*as in Form No. 1*).

To the Marshal in Admiralty of Our Supreme Court of Western
Australia, and to all and singular his substitutes, Greeting:

Whereas in this action the Court has ordered [*describe property giving
name, if a ship*] to be appraised.

We, therefore, hereby authorise and command you to reduce into
writing an inventory of the said [*ship or cargo, etc., as the case may be*], and
having chosen one or more experienced person or persons, to swear him or
them to appraise the same according to the true value thereof, and upon a
certificate of such value having been reduced into writing, and signed by
yourself and by the appraiser or appraisers, to file the same in the Registry of
Our said Court, together with this commission.

Witness (*as in Form No. 1*)

Registrar.

Taken out by (solicitors for) the .

O.74, R.46.

No. 92

COMMISSION OF SALE

(Heading as in action)

Elizabeth the Second, etc. *(as in Form No. 1)*.

To the Marshal in Admiralty of Our Supreme Court of Western Australia, and to all and singular his substitutes, Greeting:

Whereas in this action the Court has ordered [*describe property giving name, if a ship*] to be sold.

We, therefore, hereby authorise and command you to reduce into writing an inventory of the said [*ship or cargo, etc. as the case may be*], and to cause the said [*ship or cargo, etc.*] to be sold by public auction for the highest price that can be obtained for the same.

And we further command you, as soon as the sale has been completed, to pay to proceeds arising therefrom into Our said Court, and to file an account of the sale signed by you, together with this commission.

Witness *(as in Form No. 1)*.

Registrar.

Taken out by

(solicitors for) the

Second Schedule

O.74, R.46.

No. 93

COMMISSION OF APPRAISEMENT AND SALE

(Heading as in action)

Elizabeth the Second, etc. *(as in Form No. 1)*.

To the Marshal in Admiralty of Our Supreme Court of Western Australia, and to all and singular his substitutes, Greeting:

Whereas in this action the Court has ordered [*describe property giving name, if a ship*] to be appraised and sold.

We, therefore, hereby authorise and command you to reduce into writing an inventory of the said [*ship or cargo, etc. as the case may be*], and having chosen one or more experienced person or persons to swear him or them to appraise the same according to the true value thereof, and when a certificate of such value has been reduced into writing and signed by yourself and by the appraiser or appraisers, to cause the said [*ship or cargo, etc. as the case may be*] to be sold by [*private treaty*] [*public auction*] for the highest price that can be obtained for it, but not for less than the appraised value, unless the Court on your application allows it to be sold for less.

And we further command you, as soon as the sale has been completed, to pay the proceeds arising therefrom into Our said Court, and to file the said certificate of appraisement signed by you and the appraiser or appraisers and an account of the sale signed by you, together with this commission.

Witness *(as in Form No. 1)*.

Registrar.

Taken out by
the

(solicitors for)

O.76, R.2.

No. 93A

CERTIFICATE OF CHIEF JUSTICE UNDER *PUBLIC NOTARIES ACT 1979*

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 for
the Magisterial District of *as the case
may be*).

PURSUANT to section 8 of the *Public Notaries Act 1979*, I HEREBY
CERTIFY that A.B. of _____, a Practitioner of this
Court, is qualified to be a General Public Notary [*or a District Public Notary
for the Magisterial District of _____, as the case may be*]

Dated the _____ day of _____ 20 ____.

Chief Justice of Western Australia.

O.76, R.3.

No. 93B

**NOTICE OF INTENTION TO APPLY FOR APPOINTMENT AS A
PUBLIC NOTARY**

(Heading as in Form No. 93A)

NOTICE is hereby given that (name and address), a Practitioner of the
Supreme Court of Western Australia, intends to apply to the Full Court 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 Magisterial District of _____,
as the case may be*].

Any person desiring to object to the appointment of the applicant may
be heard before the Full Court by himself or counsel; but written notice,
stating the grounds of objection, must be lodged at the Central office of the
Supreme Court at Perth not less than 7 days before the day fixed for the
hearing of the application.

Dated the _____ day of _____ 20 ____.

Second Schedule

O.76, R.5(1).

No. 93C

**CERTIFICATE OF APPOINTMENT AS PUBLIC NOTARY
WESTERN AUSTRALIA**

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 Magisterial District of, in the State of Western Australia *as the case may be*] 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.

O.76, R.5(2).

No. 93D

**CERTIFICATE THAT NAME OF PUBLIC NOTARY REMAINS ON
ROLL**

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 Magisterial District of in the State of Western Australia *as the case may be*] 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.

0.78, R.1(2)

No. 94

NOTICE OF ORIGINATING MOTION
(*The Vexatious Proceedings Restriction Act 1930*)

No. _____ of 20 ____ .

In the Supreme Court
of Western Australia.

In the matter of "*The Vexatious Proceedings Restriction Act 1930*",
and

In the matter of A.B.

TAKE notice that the Full Court (*or* the Court) will be moved by the Attorney General (*or* A.B.), or by counsel on his behalf, on _____ day the day of _____, 20____, at _____ o'clock in the noon, or so soon thereafter as the parties or their counsel can be heard — for an order that no legal proceeding shall be instituted by A.B. of _____ in the Supreme Court, or in any inferior Court, unless the said A.B. shall first obtain the leave of the Supreme Court, or of some Judge thereof, after satisfying it or him that the proposed proceeding will not be an abuse of the process of the Court in which it is intended to be instituted and that there is *prima facie* ground for such proceeding; [*or* for an order giving A.B. of _____ leave to institute a legal proceeding, that is to say (*here state nature of proceeding*) for (*here state ground of the proceeding*) against X.Y. of _____ in the (*here specify the Court in which it is proposed to institute the proceeding*).]

You are required to attend before the Court at the time mentioned herein, and you may lay before it any material evidence which you are able to produce.

You should serve on the applicant a copy of any affidavit which you intend to use on the hearing.

Dated the _____ day of _____, 20 ____ .

.....
(*to be signed by Applicant or his Solicitor*).

To A.B. *or* X.Y.

This notice was issued by _____ of _____ whose address for service is _____ solicitor for the applicant who resides at _____ .

or

This notice was issued by the applicant in person who resides at _____ and whose address for service is _____

Second Schedule

O.79, R.3(a)

No. 95

Juries Act 1957

GENERAL JURY PRECEPT (CRIMINAL)

Western Australia

The Honourable (*or* His Honour)

of Western Australia.

To

Esquire,

of the said State: Greeting:

**see District
Court of Western
Australia Act
1969, s.46 (6).²⁹*

On behalf of our Lady the Queen, I command you to cause to come before the Court [*or* before the Supreme Court and the District Court]* at on the day of 20, at the hour of o'clock in the noon of the same day, not less than nor more than Jurors, by whom the truth of the several matters brought before them may be better known and inquired into, and who are of no affinity to any of the prisoners in custody for trial: And that you yourself of your deputy with you officers be then there to do those things which to you and their offices appertain: And have you then and there the names of the Jurors and this precept.

Dated at Perth, this day of in the year of Our Lord, One thousand nine hundred and in the

year of the reign of Her present Majesty Queen Elizabeth.

By the Court,

Judge.
(*or* Judge of the District Court).

O.79, R.3(b).

No. 96
Juries Act 1957
GENERAL JURY PRECEPT (CIVIL)
(Heading as in action)

Western Australia

The Honourable (*or* His Honour)
of Western Australia.

To Esquire,
of the said State: Greeting:

On behalf of our Lady the Queen, I command you to cause to come before the Court at on day the day of at the hour of o'clock in the noon of the same day 6 Jurors by whom the truth of the matters brought before them may be better known and inquired into, and who are of no affinity to any of the abovenamed parties in this action: And that you yourself or your deputy with your officers be then there to do those things which to you and their offices appertain: And have you then and there the names of the Jurors and this precept.

Dated at Perth, this day of in the year of Our Lord, One thousand nine hundred and in the year of the reign of Her present Majesty Queen Elizabeth.

By the Court,

Judge.
(*or* Judge of the District Court).

O.79, R.4.

No. 97
Juries Act 1957
SUMMONS TO JUROR

To ,
of .

You are hereby summoned to appear as a juror at the Sittings of the Court, to be held at the at , on the day of , 20 , at o'clock in the noon, and there to attend from day to day until you shall be discharged.

Dated the day of , 20 .

Sheriff (*or* Summoning Officer).

Second Schedule

O.79, R.5.

No. 98

Juries Act 1957 (s.56)

**SUMMONS TO JUROR TO SHOW CAUSE WHY EXECUTIONS
SHOULD NOT ISSUE FOR FINE IMPOSED FOR
NON-ATTENDANCE**

To _____,
of _____.

Whereas by reason of your non-attendance as a juror at the
at _____ on the _____ day of _____, 20____, the Court did
impose on you a fine of \$ _____:

Take notice that you are hereby summoned pursuant to section 56 of the
Juries Act 1957 to show cause* to the _____ Court at _____ on
the _____ day of _____, 20____, at _____ o'clock in the _____ noon
why execution should not issue for the said fine.

Dated the _____ day of _____, 20____.

Judge.

*Note. — You may show cause to the Court either by —

- (a) attending personally before the Court and giving your explanation; or
- (b) transmitting by post or delivering to the Registrar or to the Judge of the Court which imposed the fine an affidavit sworn before a commissioner for affidavits or a justice of the peace.

Second Schedule

O.79, R.6

No. 98A

Juries Act 1957

SUMMONS AND NOTICE LIST

CRIMINAL SITTINGS OF THE

SUPREME COURT/DISTRICT COURT

TO BE HELD AT: —

Commencing onthe..... day of 20

Summons No.	Name of Juror on Summons (N.B. If name now changed also show present name)	Present Address	Occupation	Whether Summons served or unserved (N.B. Return all unserved summonses)	Date of Service if served	Reasons for non-service, eg. (a) deceased, (b) left address, (c) absent from Jury District, (d) address unknown.

I (full name),

being a * { member of the Police Force of the rank of.....
 No.....stationed at.....,
 Sheriffs Officer at,

hereby certify that the foregoing information in this Summons and Notice List is true and correct.

Dated this day of20.....

(Signature)

If new address is known and the juror still resides within the Jury District the summons and notice should be forwarded to the appropriate officer for service at that address.

*Strike out whichever is inapplicable.

Second Schedule

O.80, R.3.

No. 99

**NOTICE OF APPLICATION UNDER THE *ESCHEAT (PROCEDURE)*
*ACT 1940***

IN THE SUPREME COURT
OF WESTERN AUSTRALIA.

In the matter of

deceased

Ex parte

The Crown.

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, Barrack Street, Perth, for an Order that the
property mentioned hereunder, viz: shall be and become the property
of the Crown 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.

Crown Solicitor.

O.80, R.7.

No. 100

**ORDER OF ESCHEAT UNDER THE *ESCHEAT (PROCEDURE)*
*ACT 1940***

IN THE SUPREME COURT
OF WESTERN AUSTRALIA.

In the matter of

deceased

Ex parte

The Crown.

Before His Honour

in Chambers

UPON hearing and upon reading the affidavit of ,
filed the day of 20 , and having taken into
consideration the application of the Crown Solicitor dated the
day of 20 , it is ordered that the property mentioned in the said
application, viz: shall be and become the property of the Crown
by way of Escheat [*or as the case may be*].

Dated this day of 20 .

O.81, R.1.

No. 101

ORDER FOR ARREST OF ABSCONDING DEBTOR
(SUPREME COURT ACT 1935 (S.63(2)))

(Heading as in cause or matter)

Before His Honour _____ in Chambers
Upon hearing _____ and upon reading the affidavit of _____,
filed the _____ day of _____, 20____, and

It is ordered that the defendant _____ be arrested and imprisoned until further order of this Court or a Judge thereof, unless and until he shall sooner deposit in Court the sum of \$ _____, or give to the plaintiff a bond executed by him and 2 sufficient sureties in the penalty of \$ _____, or some other security satisfactory to the plaintiff, that he will not go out of Western Australia without the leave of the Court or a Judge.

And it is further ordered that the Sheriff do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid.

Dated the _____ day of _____, 20____.

This order was obtained by E.F., of _____ whose address for service is _____ solicitor for the plaintiff A.B. who resides at _____

[Indorsement of date of arrest: see s. 68].

O.81B, R.3.

No. 102

General Title of Proceedings

In the Supreme Court of Western Australia *(or as the case may be)*

Australian Register of Judgments,

No.....of 20_____.

A.B. v C.D.

(as the title is entered in Register)

Second Schedule

O.81B, R.10.

No. 103

Notice under section 26 of the Service and Execution of Process Act 1901 of the Commonwealth²⁵ or R.9

WESTERN AUSTRALIA

In the Supreme Court of Western Australia (*or as the case may be*).

Court in which judgment given	Title of suit and date of commencement	Date of judgment	Date of Certificate	Registration number in this Court

A certificate of the above judgment has this day been registered in “*The Australian Register of Judgments*” in this Court; (*or*)

A writ of Fieri Facias has this day been issued out of this Court upon the above judgment indorsed to levy \$.....; (*or*)

Satisfaction of the above judgment (as to \$....., part thereof) has this day been entered upon the certificate thereof in this Court; (*or*)

The notice, a copy of which is hereunto annexed, has this day been filed in this Court (*or as the case may be*).

Dated this.....day of....., 20.....

To the Registrar (*or as the case may be*) of the
Court of

(L.S.)

.....
Registrar.

O.81B, R.16.

No. 104

AUSTRALIAN REGISTER OF JUDGMENTS

Registration number in this Court

Title of suit and date of commencement

Form and nature of suit

Name and addition of party to whom payment is to be made, or in whose favour judgment is given or made

Name and addition of party ordered to pay money or to do or not to do any act

Date of judgment

Abstract of judgment, stating amount (if any) ordered to be paid, and particulars of any act ordered to be done or not to be done

Date of trial and amount of verdict, if any

Date of certificate

From what Court received

Date of Registration in this Court

Date of notification of registration

Subsequent proceedings, notifications to and from other Courts, &c

O.81D, R.2.

No. 105

TITLE OF PROCEEDINGS

In the Supreme Court Arb. No. of 20
of Western Australia
In the matter of the *Commercial
Arbitration Act 1985*
and
In the matter of an arbitration
Between A.B. and C.D.line

O.81D, R.12.

No. 106

NOTICE OF PAYMENT INTO COURT

(Title as in Form No. 105)

Take notice that (name of party paying in) has paid into court \$
*with denial of liability and says that that sum is enough to satisfy the claim of
(identify party) * for
The name of the *arbitrator/*umpire is
To:
Dated, etc.
(Signed)
Solicitor for
whose address for service is
*Strike out whichever is not applicable

O.81D, R.13.

No. 107

NOTICE OF ACCEPTANCE OF SUM PAID INTO COURT

(Title as in Form 105)

Take notice that (name of party accepting) accepts the sum of \$
paid by (name of party paying in) into court in satisfaction of the claim in
respect of which it is paid in.
To (name of party paying in)
And to the Registrar
Dated, etc.
(Signed)
Solicitor for the claimant
Whose address for service is

*[Second Schedule amended in Gazette 9 November 1973 pp.4165-6;
29 March 1974 pp.1040-2; 10 January 1975 pp.50-5; 27 August 1976
p.3226; 13 October 1978 p.3702; 18 July 1980 pp.2385-7; 1 August 1980
p.2559; 2 July 1982 p.2320; 31 March 1983 p.1090; 30 November 1984
pp.3954-5; 20 June 1986 p.2045; 8 February 1991 pp.584-5 and 587-8;
19 April 1991 pp.1718-19; 7 February 1992 pp.688-93; 5 June 1992*

Second Schedule

p.2282; 1 March 1994 pp.789-93; 22 July 1994 p.3748; 26 August 1994 p.4415; 24 October 1995 pp.4919-21; 28 October 1996 pp.5709-11; 1 July 1997 p.3258 (disallowed in Gazette 13 March 1998 p.1389); 16 July 1999 pp.3195-200.]

The Third Schedule

O.24, R.12.

Payment into and out of Court

1. In this Schedule “**Accountant**” means the Accountant, Ministry of Justice.
2. When any party intends to pay money into court the provisions of regulation 15 hereof 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, an office 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 office copy of the judgment or order shall be forwarded by the Accountant to the Public Trustee.
- [5. repealed.]*
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, an office copy of the original receipted notice or pleading must be lodged at the office of the Accountant.

Third Schedule

- 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. An office copy of the order or authority shall also be lodged with the Accountant by the solicitor or party seeking the payment out.
- 9.** Where the money to be paid out has been transferred to the Public Trustee for investment, the documents required under the last 2 preceding regulations 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.
- 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 hereof. On the written authority of the party, the payment out may be made to his solicitor.
- 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.

16. The Principal Registrar shall furnish to the Accountant or Public Trustee, free of charge an office 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.

*[Third Schedule amended in Gazette 14 December 1979 p.3872;
5 April 1991 p.1401; 26 August 1994 p.4415.]*

Fourth Schedule

The Fourth Schedule⁷

Scale of Costs

		\$
O.66, R.11(1)		
1.	(a) Writ of summons, whether generally or specially indorsed, including instructions but excluding statement of claim	98
	(b) For each additional defendant	24
2.	Next friend or guardian <i>ad litem</i>	60
3.	Entry of judgment by default or pursuant to order (without trial), or pursuant to acceptance of offer to consent to judgment (including notice of acceptance)	60
4.	(a) Payment into or out of Court	60
	(b) Notice of offer to consent to judgment	36
5.	Appearance and notice	36
6.	<i>Pleadings:</i>	
	(a) Statement of claim	40-245
	(b) Defence (including instructions)	40-245
	If with counterclaim or set-off, an additional	40-245
	(c) Reply (<i>if necessary</i>), defence to counterclaim, or any other pleading (excluding application for leave)	40-245
7.	Third party notice and pleadings in third party proceedings	Allowances calculated in accordance with items 1 and 6.
8.	Requesting particulars of a pleading (<i>where and to the extent necessary</i>)	16-245
9.	(a) Notice requiring discovery	36
	(b) Giving discovery of documents	40-368
	(c) Inspection and giving inspection —per hour	24-98
10.	(a) Delivery of interrogatories	32-245
	(b) Answers to interrogatories	32-245
11.	Examination of witness before trial by counsel or solicitor, pursuant to order	An allowance calculated in accordance with item 14(b)
12.	Application for and striking jury	98

Fourth Schedule

		\$
13.	Getting up case for trial (<i>subject to item 14(f)</i>)	Not exceeding \$2 500 for the first \$25 000 of the value of the subject matter of the action; 2% for the balance thereof.
14.	<i>Counsel fees:</i>	
(a)	Counsel fee on trial For Queen's Counsel (<i>where 2 or more counsel are certified for</i>), add 50%	240-2 345
(b)	Counsel fee for the second and each successive day of hearing For Queen's Counsel (<i>where 2 or more counsel are certified for</i>), add 50%	400-735
(c)	Counsel fee on trial for second (if certified for) – an allowance <i>not exceeding</i> two-thirds of the amounts that would have been allowed under item 14(a) or item 14(b) if he had appeared alone	
(d)	Solicitor attending trial, per hour, <i>not exceeding</i> Note: a suitable allowance may be made for the attendance of a clerk	112
(e)	Attending on a reserved judgment or at a callover, <i>not exceeding</i>	122
(f)	Where the only issue tried is the assessment of damages, three-quarters of the amounts prescribed by items 13, 14(a), 14(b), 14(c), and 14(d) shall be allowable, unless otherwise directed by the Court.	
15.	Settling and extracting judgment after trial:	
(a)	With appointment, <i>not exceeding</i>	98
(b)	Without appointment, <i>not exceeding</i>	60
16.	Drawing bill of costs, copies and service	26-245
17.	Taking accounts; inquiries; taxation of costs, and the like per hour	16-98
18.	<i>Re-trial or Re-hearing:</i>	
(a)	Getting up case for re-trial or re-hearing	
(b)	Re-trial or re-hearing	Such amounts as are reasonable in the circumstances.

Fourth Schedule

		\$
19.	(a) Special case, case stated (otherwise than by way of appeal) or trial of an issue (not covered by item 14(f))	240-1 835 (but the Court may direct that the costs be taxed as in an action)
	(b) For the second and each successive day of the trial or hearing	An allowance calculated in accordance with item 14 (b).
20.	<i>Appeals to Judge or to the Full Court (including appeals by way of case stated):</i>	
	(a) Notice of appeal, motion for order nisi to review, and the like	40-245
	(b) Getting up appeal for hearing, (including settling index to transcript) ..	80-735
	(c) Counsel fee on hearing	80-1 470
	For Queen's Counsel (where 2 or more counsel are certified for), add 50%	
	(d) Counsel fee for the second and each successive day of hearing, <i>not exceeding</i>	735
	For Queen's Counsel (where 2 or more counsel are certified for), add 50%	
	(e) Counsel fee on hearing for second counsel (<i>if certified for</i>) — an allowance <i>not exceeding</i> two-thirds of the amounts that would have been allowed under item 20(c) or 20(d) if he had appeared alone	
	(f) Attending on reserved decision, <i>not exceeding</i>	122
	(g) Settling and extracting order disposing of the appeal —	
	(i) with appointment, <i>not exceeding</i>	98
	(ii) without appointment, <i>not exceeding</i>	60

Fourth Schedule

		\$
21.	Originating motion or originating summons or petition	80-1 835 but the Court may direct that the costs of the parties or any of them be taxed as in an action.
22.	Motions in Court not otherwise provided for	40-490
23.	Proceedings in Chambers other than proceedings to which item 21 applies	32-490
24.	Arbitration proceedings	The same costs as in an action.
25.	Proceedings, whether by action or otherwise, for the recovery of compensation for the taking or resumption of land or any other property by the Crown in right of the State or of the Commonwealth or by any other person, body or instrumentality pursuant to any statutory power	The same costs <i>mutatis mutandis</i> as allowed in civil actions, but the Court or tribunal shall determine what is a just and equitable basis for the taxation.
26.	Proceedings by way of prerogative writ	Allowances calculated in accordance with item 20.
27.	(a) Execution	98
	(b) If against land, an additional	73
28.	<i>Service of process:</i>	
	(a) Personal service where service in another manner is not authorised	16
	(b) Service by post or at an address for service	6.40
	(c) Where the process is served at a place more than one kilometre from the nearest office of the solicitor effecting service for each kilometre (one way) from the solicitor's office	0.48
	(d) Where the process cannot be served after reasonable inquiry (in addition to the allowance prescribed by paragraph (c)	6.40
	(e) Where the process is subsequently served at another address, for attempted service <i>in the discretion of the Taxing Officer</i> (in addition to the allowance prescribed by paragraph (c)	6.40

Fourth Schedule

- §
- (f) Where more than one attendance is necessary to ground an application for substituted service, such further allowance may be made as the Taxing Officer thinks fit
 - (g) Where it is proper to effect service through an agent, such allowance may be made as the Taxing Officer thinks fit.

Notes:

- (1) Where a person has or could have been served with more than one process at the one time, one service fee only shall be allowed.
- (2) One allowance only under paragraph (c) shall be made where 2 or more processes are served at the one time, whether on one person or on more than one person.
- (3) An allowance under paragraph (c) shall not exceed the cost of service by the nearest sheriff's officer or bailiff of a Local Court.
- (4) In this item, "**process**" means a writ, notice of motion, summons, petition, judgment or order.

§

29. Photocopying of documents (*where necessary*),
not exceeding —
 per page 0.53

30. *Allowances to witnesses:*

- (1) (a) Persons carrying on a profession or business as principals, a daily allowance, *not exceeding* 147.00
- (b) Other persons, a daily allowance, *not exceeding* 98.00
- (2) In fixing the allowance to be made under subparagraph (1) of this item, the Taxing Officer may have regard to the amount of salary or wages (if any) actually lost by the witness.
- (3) In addition to the foregoing allowances, a witness residing at a distance from the place of trial or hearing may be allowed reasonable travelling expenses actually paid, and a reasonable amount for maintenance or sustenance.
- (4) The Taxing Officer may also allow such amount as has been reasonably and properly incurred and has been paid or is to be paid to a witness for qualifying to give skilled evidence.
- (5) Except by special order of the trial judge, an allowance shall not be made to an expert witness for his attendance at Court in assisting or advising counsel or the solicitor for a party during a trial or hearing.
- (6) In the case of a person giving evidence as an expert, the foregoing allowances may be increased in the discretion of the Taxing Officer.

Fourth Schedule

*[Fourth Schedule inserted in Gazette 13 December 1985 pp.4761-4;
erratum in Gazette 3 January 1986 p.11; amended in Gazette
30 June 2000 p.3419.]*

Fifth Schedule

The Fifth Schedule

O.83A, R.1.

Fees

Part I

Fees to be taken in the Central Office

Item	Matter	Fee \$
1.	(a) Commencing any cause or matter, including filing a draft notice of appeal, other than proceedings of the kind referred to in item 1A or 9;	
	(b) Filing a cross appeal	265.00
1A.	(a) Filing a counterclaim; or	
	(b) Issuing a third party notice or a notice under O.19, R.8;	
	(c) An application to extend a period of time fixed by law including an application to extend time before proceedings are commenced;	
	(d) An application to limit a period of time within which proceedings may be taken;	
	(e) An application for leave to serve a writ or notice of a writ out of jurisdiction;	
	(f) An application to swear to the death of a person;	
	(g) An application for leave to appeal;	
	(h) An application to remove a local court appeal into the Full Court;	
	(i) An application for inclusion in the Expedited list	100.00
1B.	Commencing an appeal to which O.60A R. 4 applies	200.00
2.	Registering a certificate or judgment in proceedings under the <i>Service and Execution of Process Act 1992</i> of the Commonwealth	40.00
3A.	Entering for hearing a cause or matter except where item 3B applies	200.00
3B.	Entering for hearing an appeal resulting from an order of a Court of Petty Sessions	100.00
3C.	If an application for an urgent hearing results in the Court being opened after normal hours for the hearing, for each hour or part of an hour	250.00
4.	On an appointment before a Master or Registrar —	
	(a) on a reference for trial or for inquiry and report;	
	(b) to pass accounts;	

Fifth Schedule

Item	Matter	Fee \$
	(c) to settle the index of a transcript for use upon the hearing of an appeal; or	
	(d) to settle a list of creditors under the <i>Companies (Western Australia) (Transitional Provision) Rules 1982</i> or for a certificate under r.49 or 54(3) of those rules	70.00
5.	On an appointment to tax a bill of costs in a cause or matter or under the <i>Legal Practitioners Act 1893</i> or the <i>Commercial Arbitration Act 1985</i> —	
	(a) lodgment fee	20.00
	plus	
	(b) taxing fee —	
	(i) where the amount claimed is under \$2 000	50.00
	(ii) where the amount claimed is \$2 000 or more 2.5% of the amount at which the bill is drawn.	
	NOTE: The taxing Officer shall allow against the person chargeable with the costs as taxed, taxing fees at the rate of 2.5% of the amount found due on taxation.	
6.	For searching any proceeding or record other than a search made by or on behalf of a party to the proceeding	10.00
7.	(a) On an application for the production of records or documents that are required to be produced to any court or tribunal (including an umpire or arbitrator)	15.00
	(b) Where an officer is required to attend at any court or place out of the Supreme Court building, his reasonable expenses and, in addition, for each hour or part of an hour when he is necessarily absent from his office	25.00
8.	Admiralty Proceedings —	
	(a) on an application in a pending cause or matter whether by summons or on motion, other than an application by the Marshal; or	
	(b) entry for hearing of a reference to the Registrar	70.00
	(c) sealing a warrant of arrest release, commission for the appraisalment or sale of property or for the appraisalment and sale of property	20.00

Fifth Schedule

Item	Matter	Fee \$
	NOTES:	
	(1) Where the Registrar is assisted by one or more merchants or other assessors, such daily fee shall be payable for each assessor or merchant as a Judge or the Registrar may consider reasonable.	
	(2) The fees payable to assessors or merchants shall become due <i>de die in diem</i> as the reference proceeds and shall be payable in the first instance by the claimant.	
9.	(a) On an application for a commission to take affidavits or for sealing any other commission, unless otherwise prescribed; and	
	(b) on an application for admission as a practitioner	50.00
10.	(a) For typing a copy of a document of any kind or for examining a typed copy of a document of any kind not bespoken, including marking as an office copy if required — for each page or part thereof...	5.00
	(b) For a photographic copy of a document of any kind, including prepared transcript and of any plan, map, drawing or diagram, including marking as an office copy if required for each page or part thereof	3.00
	and for second or subsequent copies — per page	0.50
	(c) For a photographic copy of reasons for judgment consisting of not more than 10 pages —for each copy issued to a person not a party to the proceedings and for each copy in excess of one copy issued to a party to the proceedings	7.00
	and for each page in excess of 10	1.00
	(d) For photographic copies of exhibits or other documents (other than evidence or reasons for judgment) required for use on an appeal — for each page	1.00
	(e) For examining the transcript on an appeal — for each page	1.00
	NOTE: This fee is not payable where item 10(d) applies.	

Fifth Schedule

Item	Matter	Fee \$
(f)	For a typed copy of a document in a foreign language or for a copy other than a photographic copy of a plan, map, section drawing, photograph or diagram — the reasonable cost thereof as certified by a Registrar.	
(g)	For certifying under seal that a document is a true copy — an additional fee of.....	5.00
(h)	For a certificate under the hand of a Registrar.....	20.00

Fifth Schedule

Part II

Fees to be taken in the Probate Office

Item	Matter	Fee \$
11.	On application for an original grant or to reseal a foreign grant —	
	(a) where the value of the estate is less than \$5 000	50.00
	(b) where the value of the estate is \$5 000 or over	120.00
	NOTES:	
	(1) this fee covers:	
	(a) all documents filed in support of the application;	
	(b) preparation of the necessary photographic copies of documents including will (if any) required for the grant and Court files; and	
	(c) the issue of the grant.	
	(2) This fee is not chargeable on a grant <i>pendente lite</i> or <i>ad colligenda bona</i> , as to which see item 11A.	
	(3) In this item and in subsequent items in this Part, “grant” means a grant of probate or administration with or without the will, or an order to administer.	
11A.	On application for a second subsequent grant in relation to the same deceased person or for a grant <i>pendente lite</i> or <i>ad colligenda bona</i>	75.00
	NOTE: This fee is subject to Note (2) to Item 11.	
12.	For depositing a will of a deceased person in the Registry, (including renunciation of executor).....	20.00
13.	(a) For photographic copies of a will or other document, including marking as an office copy if required — for each page	3.00
	and for second or subsequent copies per page	0.50
	(b) For typing of a copy of a will or other document including marking as an office copy if required — for each page or part thereof	5.00
	(c) For collating a copy with the original document and marking as an office copy if required — for each page or part thereof	5.00
	NOTE: This fee is not payable where the copy is a photographic copy or where item 13(b) is payable.	

Fifth Schedule

Item	Matter	Fee \$
	(d) For certifying under seal that a copy of a document is a true copy —an additional fee of	5.00
14.	(a) For a duplicate or triplicate probate or administration (in addition to item 13(a));	
	(b) For an exemplification of a grant (in addition to item 13(a)); or	
	(c) for drawing and engrossing a grant (other than an application under s.55 of the <i>Administration Act 1903</i>) including collating	25.00
15.	For settling and sealing a citation or a subpoena	25.00
16.	For a search for and inspection of a document or file of documents	6.00

Fifth Schedule

Part III

Fees to be taken by the sheriff and the Marshal

Item	Fees to be taken by the sheriff Matter	Fee \$
17.	(a) Receiving and entering a writ or order for execution including issuing warrant and statement under 0.47, R.11	50.00
	(b) Receiving and entering a writ or other process for service	20.00
18.	(a) Service of a writ of summons or other process or document (including the execution of any affidavit of such service)	29.50
	(b) Attempted Service: Where after reasonable inquiry the process or other document cannot be served (in addition to an allowance for kilometres travelled)	21.00
	(c) Where the process or document is subsequently served at another address, for attempted service in the discretion of the Registrar or sheriff (in addition to an allowance for kilometres travelled)	21.00
	NOTE: Where a person is or could have been served with more than once document at the one time, one fee only shall be allowed.	
19.	(a) For executing a writ or other process or for an arrest or for each seizure of goods	47.00
	(b) For the release from arrest of any person	29.50
	(c) For inquiries concerning judgment debtor's property or for attempted execution (where item 19(a) is not payable)	29.50
20.	For kilometres travelled on execution of a warrant or other process. Or on service of a writ, summons, other process or document, or on making an arrest or attending a view, for each kilometre (one way) for the sheriff's office or Bailiff's office	0.75
	NOTE: Where more than one process or document is executed or served at the same time on the same person or on different persons at the same address, only one allowance for kilometres travelled shall be chargeable	For travel in the metropolitan area; or 0.75 For travel outside the metropolitan area, or such higher fee as the sheriff may allow.

Fifth Schedule

Item	Matter	Fee \$
21.	<p>(a) Poundage on executing a writ of fieri facias or other process under or by reason of which money is received by the sheriff or by the judgment creditor, after seizure, 5% on the first \$10 000.00 and 2.5% on the balance above that amount.</p> <p>(b) Where the sale of land, interest in land, or goods or chattels is conducted by a licensed auctioneer instructed by the sheriff, poundage shall be charged at one-half the abovementioned rates.</p> <p>NOTE: For the purposes of this item —</p> <p>(a) with respect to land, or an interest in land, the service of the writ of fieri facias on the Registrar of Titles under section 133 of the <i>Transfer of Land Act 1893</i>;</p> <p>(b) the seizure of chattels in the possession or apparent possession of the judgment debtor; or</p> <p>(c) the seizure of books of account in the possession of the judgment debtor,</p> <p>shall be or be deemed to be “seizure”.</p>	
22.	<p>Where the sale, whether by public auction or otherwise, is conducted by the sheriff or his officer without the intervention of an auctioneer or agent, poundage of 1% of the proceeds of sale (in addition to that prescribed by item 21(a) shall be chargeable; but the amount chargeable under this item shall not exceed \$90.00.</p>	
23.	<p>(a) Poundage on executing a writ of possession: 5% on the first \$10 000.00 and 2.5% on balance of the annual rental value of property as fixed by the sheriff.</p> <p>(b) Poundage on executing a writ of delivery: 5% on the first \$10 000.00 and 2.5% on the balance of the value of the property delivered, as fixed by the sheriff.</p>	

Fifth Schedule

Item	Matter	Fee \$
24.	For auctioneer's or agent's commission, advertising and sundry expenses on account of sale by auction or otherwise of goods or chattels or land or any interest in land, whether a sale does or does not take place	A fee fixed in accordance with the recognised scale of charges for auctioneers and agents in the State of Western Australia, or such other fee as the sheriff may allow.
25.	Where a sale takes place by auction or private contract, or when no sale takes place — (a) for advertising and giving publicity to any sale, or intended sale, printing catalogues and bills and distributing and posting the same (b) for labour (if any) employed in lotting and showing goods or chattels, preparing catalogues and where a sale takes place by auction attending the sale and superintending the removal of goods or chattels by purchaser (c) travelling expenses	The sums actually and reasonably paid.
26.	(a) Assistants required to execute a writ of possession (b) Man in possession (c) Out-of-pocket expenses incurred by the Bailiff or officer while executing any process including postage, telegraphic and telephonic messages, and travelling expenses of himself and assistants (d) Clerical assistance when necessary (e) Warehousing or storage of goods or vehicles which are being or are about to be, or have been removed, and insurance thereof against fire, damage, and in the case of motor vehicles, accident and third party risk (f) Removal or cartage expenses	The sums actually and reasonably paid.

Fifth Schedule

Item	Matter	Fee \$
	(g) Where animals or other livestock have been removed for taking charge of same and for their keep while in custody of the sheriff whether before or after removal	
27.	Preparing for the sale of real or personal property including drawing advertisements and particulars and conditions of sale but excluding actual disbursements (see items 24, 25 and 26)	100.00
28.	For attendance at sale	47.00
29.	Where an officer is required to attend Court in charge of any person including a prisoner ordered to attend for examination pursuant to a Judge's order, or to lodge any person in a lock up the reasonable travelling and other expenses of the officer and the person or prisoner, and in addition for each hour or part of an hour when the officer is necessarily engaged	29.50
30.	Fee to the sheriff for attending a view — per hour or part thereof	29.50
31.	(a) Striking a jury and preparing jury panel	100.00
	(b) Attendance of sheriff's Officer at hearing (per day or part thereof)	The sum actually and reasonably paid.
32.	Where a sheriff's officer, or other person employed under the sheriff shall be necessarily put to and incur extra trouble and expense in the discharge of any duty incidental to his office or employment or for any duty or service not herein provided, such sum or such additional sum, as the case may be, as the sheriff may allow. Fees to be taken by the Marshal in Admiralty	
33.	Receiving and entering a warrant or release	50.00
34.	Receiving and entering a writ of summons, decree, order, commission or other instrument under the seal of the Court	20.00
35.	For service of writ of summons	47.00
36.	For executing a warrant for the arrest of a ship or other property	117.00
37.	Where a writ of summons is served at the same time as a warrant of arrest is executed, in lieu of items 35 and 36 a fee of	141.00
38.	For the execution of an attachment —for each person	47.00
39.	For the release from arrest of a vessel, goods or person	29.50

Fifth Schedule

Item	Matter	Fee \$
40.	For attending the discharge of cargo, or removal of a vessel or goods, per hour	29.50
41.	For the execution of a commission of appraisalment or sale, or appraisalment and sale, in addition to the fees paid to the appraiser or auctioneer	100.00
42.	For the execution of a decree or order, commission, or other instrument other than those herein provided	47.00
43.	On the gross proceeds of a vessel or goods, etc., sold — For every \$100.00 or part thereof up to \$20 000.00 For each additional \$100.00 or part thereof	4.00 2.00
44.	(a) for retaining possession of a vessel with or without cargo, or of a cargo without a vessel, the expenses per day actually paid in respect of a shipkeeper or shipkeepers, and in addition per day	29.50
	NOTE: Where the possession is for a lengthy period, this fee may be reduced at the discretion of the Marshal.	
	(b) Other actual and necessary payments made by the Marshal for the safe custody of property under arrest may be also allowed.	
	NOTE: No fee shall be payable for the custody and possession of property under arrest if it consists of money in a bank, or of goods stored in a bonded warehouse, or if it is in the custody of a customs house officer, or other authorised person.	
45.	The Marshal or any of his officers, if required to travel for the purpose of discharging his duty, shall be entitled to his reasonable expenses for travelling, board and maintenance, in addition to the foregoing fees	
46.	For any duty or service not provided for in this Part, or where the fee prescribed is insufficient having regard to the circumstances of the case, such sum, or such additional sum, as the Marshal, upon special application, may allow. NOTE: The Marshal may require a deposit of money on account of the fees applicable to any proceedings before the proceedings are commenced. He may also require an undertaking in writing to pay any further fees or charges which may become payable beyond the amount so deposited.	

Fifth Schedule

[Fifth Schedule inserted in Gazette 17 August 1990 pp.4071-8; amended in Gazette 21 August 1992 pp.4122-3; 26 January 1993 p.830; 17 September 1993 pp.5060-1; 1 July 1994 pp.3238-9; 26 August 1994 p.4415; 9 September 1994 p.4630; 7 July 1995 p.2819; 9 August 1996 p.3951; 28 October 1996 p.5711; 1 July 1997 pp.3258-60 (Disallowed in Gazette 13 March 1998 p.1389) 6 March 1998 p.1178; 5 November 1999 p.5632]

[Sixth Schedule repealed in Gazette 16 July 1999 p.3201.]

Form 2

O.81G, R10

Originating process

[Title]

A. DETAILS OF APPLICATION

This application is made under *section/*regulation [number] of the *Corporations Law/*ASIC Law/*Corporations Regulations.

[State briefly the nature of the proceeding, e.g. application for winding-up on ground of insolvency; or complaint about a receiver.]

On the facts stated in the supporting affidavit(s), the plaintiff claims:

1

2

etc.

AND

Date:

.....
Signature of plaintiff or
plaintiff's legal practitioner

B. NOTICE TO DEFENDANT(S)

TO: [name and address of each defendant (if any)].

This application will be heard by at [address of Court] at *a.m./*p.m. on If you or your legal practitioner do not appear before the Court at that time, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;

Seventh Schedule

- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

C. APPLICATION FOR WINDING-UP ON GROUND OF INSOLVENCY

[Complete this section if this originating process is seeking an order that a company be wound up in insolvency on the ground that the company has failed to comply with a statutory demand (see section 459Q of the Corporations Law.)]

[Set out particulars of service of the statutory demand on the company and of the failure to comply with the demand.]

[Attach to this originating process a copy of the statutory demand and, if the demand has been varied by an order made under section 459H(4) of the Corporations Law because of a dispute or offsetting claim, a copy of the order made under that subsection.]

[The affidavit in support of this originating process must —

- (a) verify service of the demand on the company;*
- (b) verify the failure of the company to comply with the demand; and*
- (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable at the date when the affidavit is made.]*

D. FILING

Date of filing: *[date of filing to be entered by Principal Registrar]*

.....
Principal Registrar

This originating process is filed by *[name]* for the plaintiff.

E. SERVICE

The plaintiff's address for service is *[address of plaintiff's legal practitioner or of plaintiff]*.

*It is not intended to serve a copy of this originating process on any person.

OR

*It is intended to serve a copy of this originating process on each defendant and on any person listed below —

[name of defendant and any other person on whom a copy of the originating process is to be served].

[Complete the following section if the time for service has been abridged.]

The time by which a copy of this originating process is to be served has been abridged by order made by *[name of Judge or other Court officer]* on *[date]* to *[time and date]*.

* *Omit if not applicable*

Seventh Schedule

Form 3

O.81G, R.10

Interlocutory process

[Title]

A. DETAILS OF INTERLOCUTORY APPLICATION

*This interlocutory application is made under *section/*regulation [number] of the *Corporations Law/*ASIC Law/*Corporations Regulations.

On the facts stated in the supporting affidavit(s), the applicant, [name], applies for the following interlocutory relief —

1

2

etc.

AND

Date:

.....
*Signature of applicant making this application or
applicant's legal practitioner*

B. NOTICE TO RESPONDENT(S)

TO: [name and address of each respondent to this interlocutory process (if any).
If applicable, also state the respondent's address for service.]

This interlocutory application will be heard by
at [address of Court] at *a.m./*p.m. on If you or your legal
practitioner do not appear before the Court at that time, the application may be
dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done
so or you are the plaintiff in this proceeding, file a notice of appearance, in the
prescribed form, in the Registry and serve a copy of it on the plaintiff in the
originating process.

C. FILING

This interlocutory process is filed by [*name*] for the applicant.

D. SERVICE

The applicant's address for service is [*address of applicant's legal practitioner or of applicant*].

*It is not intended to serve a copy of this interlocutory process on any person.

OR

*It is intended to serve a copy of this interlocutory process on each respondent and on any person listed below —

[*name of respondent and any other person on whom a copy of the interlocutory process is to be served*].

[Complete the following section if the time for service has been abridged.]

The time by which a copy of this interlocutory process is to be served has been abridged by order made by [*name of Judge or other Court officer*] on [*date*] to [*time and date*].

* *Omit if not applicable*

Seventh Schedule

Form 4

O.81G, R.17

Notice of appearance

[Title]

A. DETAILS OF PERSON INTENDING TO APPEAR

Notice is given that [state full name and address], [briefly state your interest in the proceeding, e.g. a creditor for \$ (amount), or a contributory, of the corporation] intends to appear before the Court at the hearing of the application to be heard at [name of Court and address] on [date] and, if applicable, to *oppose/*support the application.

B. GROUNDS OF OPPOSITION TO WINDING-UP

[Complete this section only if you are opposing an application to wind-up a company.]

The grounds on which I oppose the application for winding-up are —

1

2

etc.

C. SERVICE

[This section must be completed]

The address for service of the person giving this notice is [address of person's legal practitioner or of person].

.....
Signature of person giving notice
or of person's legal practitioner

* Omit if not applicable

Form 5

O.81G, R.18

Notice of intervention by the Commission

[*Title*]

The Australian Securities and Investments Commission, whose address for service is [*address*], intervenes in this proceeding.

Date:

.....
Signed on behalf of the Commission

Name of signatory: [*name*].

Capacity of signatory: [*capacity*].

Form 6

O.81G, R.27

Notice of hearing to approve compromise or arrangement

TO all the creditors and members of [*name of company*].

TAKE NOTICE that at *a.m./*p.m. on, the
. . . at [*address of Court*] will hear an application by [*name of plaintiff*] seeking
the approval of a compromise or arrangement between the abovenamed
company and its *members/*creditors as proposed by a resolution passed by the
meeting of the *members/*creditors of the company held on [*date*].

[Complete this section if applicable]

The proposed compromise or arrangement as passed by the meeting was
amended from the form of compromise or arrangement previously sent to you in
the following respects —

[*Set out the details of any amendment made at the meeting.*]

If you wish to oppose the approval of the compromise or arrangement, you must
file and serve on the plaintiff a notice of appearance, in the prescribed form,
together with any affidavit on which you wish to rely at the hearing. The notice
of appearance and affidavit must be served on the plaintiff at its address for
service at least one day before the date fixed for the hearing of the application.

[This section must be completed]

The address for service of the plaintiff is [*address of plaintiff's legal
practitioner or of plaintiff*].

Name of person giving notice or of person's legal practitioner [*name*].

* *Omit if not applicable*

Form 7

O.81G, R.31

Affidavit accompanying statutory demand

[*Name of creditor(s)*]

Creditor(s)

[*Name of debtor company*]

Debtor company

I, [*name*] of [*address and occupation*], *say on oath/*affirm [*or* *make oath and say/*solemnly and sincerely declare and affirm] —

- 1 I am [*state deponent's relationship to the creditor(s), e.g., 'the creditor', '(name), one of the creditors', 'a director of the creditor', 'a director of (name), one of the creditors'*] named in the statutory demand, which this affidavit accompanies, relating to the *debt/*debts owed by [*name of debtor company*].
- 2 [*If the deponent is not the creditor, state the facts entitling the deponent to make the affidavit, e.g. 'I am authorised by the creditor(s) to make this affidavit on its/their behalf'*].
- 3 [*State the source of the deponent's knowledge of the matters stated in the affidavit in relation to the debt or each of the debts, e.g. 'I am the person who, on behalf of the creditor(s), had the dealings with the debtor company that gave rise to the debt', 'I have inspected the business records of the creditor in relation to the debtor company's account with the creditor'*].
- 4 *The debt of \$[*amount*]/*The total \$[*amount*] of the debts mentioned in the statutory demand is due and payable by the debtor company.
- 5 I believe that there is no genuine dispute about the existence or amount of the *debt/*any of the debts.

*Sworn/*affirmed at: [*place of swearing or affirmation*] on [*date*]

OR

Seventh Schedule

*Sworn/*affirmed by the abovenamed deponent at: [*place of swearing or affirmation*] this day of [*month*] [*year*]

.....
Signature of deponent

Before me:

.....
Signature and designation of person before whom deponent swears or affirms affidavit

* *Omit if not applicable*

<p><i>Note</i> The form of the opening words and the jurat of this affidavit may be changed to conform to the form of affidavit used in a particular State or Territory — see rule 14.</p>

Form 8

O.81G, RR.34, 41

Consent of liquidator/provisional liquidator

[*Title*]

I, [*name*], of [*address*], an official liquidator, consent to be appointed by the Court and to act as the *liquidator/*provisional liquidator of [*name of company*].

I am not aware of any conflict of interest or duty that would make it improper for me to act as *liquidator/*provisional liquidator of the company.

Date:

.....
Signature of official liquidator

* *Omit if not applicable*

Seventh Schedule

Form 9

O.81G, R.35

Notice of application for winding-up order

IN THE [*name of Court*] No. of [*year*]

[*Name of company*]

ACN: [*ACN of company to which proceeding relates*]

- 1 A proceeding for the winding-up of [*name of company*] was commenced by the plaintiff, [*name of plaintiff*], on [*date of filing of originating process*] and will be heard by
..... at [*address of Court*] at *a.m./*p.m. on . .
..... Copies of documents filed may be obtained from the plaintiff's address for service.
- 2 The plaintiff's address for service is [*address of plaintiff's legal practitioner or of plaintiff*].
- 3 Any person intending to appear at the hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the plaintiff at the plaintiff's address for service at least 3 days before the date fixed for the hearing.

Date:

Name of plaintiff or plaintiff's legal practitioner: [*name*]

* *Omit if not applicable*

Form 10

O.81G, R.39

Notice of application for winding-up order by substituted plaintiff

IN THE [name of Court] No. of [year]

[Name of company]

ACN: [ACN of company to which proceeding relates]

- 1 [Name of substituted plaintiff], who was, by order of the [name of Court], substituted as a plaintiff, will apply to the Court at *a.m./*p.m. on at [address of Court] for an order that the above company be wound up.
- 2 The address for service of the substituted plaintiff is [address of substituted plaintiff's legal practitioner or of substituted plaintiff].
- 3 Any person intending to appear at the hearing must file a notice of appearance, in accordance with the prescribed form, together with any affidavit on which the person intends to rely, and serve a copy of the notice and any affidavit on the substituted plaintiff at its address for service at least 3 days before the date fixed for the hearing.

Date:

.....
Signature of person giving notice
or of person's legal practitioner

* Omit if not applicable

Seventh Schedule

Form 11

O.81G, R.40

Notice of winding-up order and of appointment of liquidator

IN THE [*name of Court*]

AT [*location of Court*]

IN THE MATTER OF [*name of company to which the proceeding relates*]

ACN: [*ACN of company to which proceeding relates*]

On [*date*], the [*name of Court*] in Proceeding No. of [*year*], ordered the winding-up of [*name of company*] and I was appointed as liquidator of the company.

Date:

Name and address of liquidator: [*name and address*]

Form 12

O.81G, R.42

Notice of appointment of provisional liquidator

IN THE [*name of Court*]

AT [*location of Court*]

IN THE MATTER OF [*name of company to which the proceeding relates*]

ACN: [*ACN of company to which proceeding relates*]

On [*date*], in Proceeding No. of [*year*], heard by the [*name of Court*], I was appointed as the provisional liquidator of the above company.

Date:

Name and address of provisional liquidator: [*name and address*]

Seventh Schedule

Form 13

O.81G, R.48

**Notice by creditor or contributory of objection to release
of liquidator**

[*Title*]

[*Name of creditor/contributory*] of [*address of creditor/contributory*], a creditor of [*name of company*] for \$[*amount*], or a contributory of [*name of company*] holding [*number*] shares in the company, objects to the grant of a release to [*name of liquidator*] of [*address of liquidator*], who is the liquidator of [*name of company*], on the following grounds —

[*set out the grounds upon which the objection is made*]

Date:

.....
*Signature of objector
or objector's legal practitioner*

Name of objector or objector's legal practitioner: [*name*].

The objector's address for service is [*address of objector or objector's legal practitioner*].

Form 14

O.81G, R.50

Affidavit in support of application for order for payment of call

[*Title*]

I, [*name*] of [*address*], liquidator, *say on oath/*affirm [*or* *make oath and say/*solemnly and sincerely declare and affirm]:

- 1 I am the liquidator of [*name of company*] (the company).
- 2 On [*date*] I made a call of \$[*amount*] per share on all the contributories of the company [*or specify the class of contributories on whom the call was made*]. *Annexed/*Exhibited and marked **A** is a copy of the notice of the call. Each contributory whose name is shown in the Schedule marked **B** was duly served with notice of the call in the form annexed or exhibited and marked **A**.
- 3 Each contributory of the company whose name is set out in column 2 of the Schedule marked **B** has not paid, or caused to be paid, to me the sum specified opposite the contributory's name in column 5 of the Schedule, which is due from that contributory under the call.
- 4 The amount set out opposite the name of each contributory in column 6 of the Schedule is an estimate of the amount due by that contributory in respect of the costs of applying for and giving effect to the order for payment of the call. The estimate of the amounts so due by the several contributories has been reached by apportioning the costs among the contributories who have not paid the call according to the liability of the respective contributories to contribute.
- 5 The amount set out opposite the name of each contributory in column 7 of the Schedule is the total of the amount due by that contributory in respect of the call as set out in column 5 and the amount due in respect of costs as set out in column 6.

*Sworn/*affirmed at: [*place of swearing or affirmation*] on [*date*]

OR

Seventh Schedule

*Sworn/*affirmed by the abovenamed deponent at: [*place of swearing or affirmation*] this day of [*month*] [*year*].

.....
Signature of deponent

Before me:

.....
Signature and designation of person before whom deponent swears or affirms affidavit

* *Omit if not applicable*

<p><i>Note</i> The form of the opening words and the jurat of this affidavit may be changed to conform to the form of affidavit used in a particular State or Territory — see rule 14.</p>

Schedule B

Number on list of contributories	Name	Address	Character in which included in the list	Unpaid amount of call	Proportion of costs of application	Total amount payable
-----------------------------------------	-------------	----------------	------------------------------------------------	------------------------------	-------------------------------------------	-----------------------------

Form 15

O.81G, R.51

Notice of application for leave to distribute a surplus

IN THE [*name of Court and address*]

APPLICATION NO:

IN THE MATTER OF [*company name*]

ACN: [*ACN of company to which proceeding relates*]

On at, the will
hear an application by the liquidator of [*name of company*] in Proceeding No.
of [*year*] for leave to distribute a surplus in respect of the liquidation of the
company.

Any person intending to appear at the hearing must file a notice of appearance,
in accordance with the prescribed form, together with any affidavit on which the
person intends to rely, and serve a copy of the notice and affidavit on the
liquidator at the address shown below at least 3 days before the date fixed for
the hearing.

Name of liquidator: [*name*].

The liquidator's address for service is [*address*].

.....
Signature of liquidator

Seventh Schedule

Form 16

O.81G, RR.57, 58, 59, 60, 61

Notice of intention to apply for remuneration

IN THE MATTER OF [*company name*]

ACN: [*ACN of company to which proceeding relates*]

TO: [*name and address of person to whom notice is given*]

TAKE NOTICE that, not less than 21 days after this notice is served on you, I, [*name and address*], the *receiver/*administrator/ *liquidator/*provisional liquidator/*special manager of the above company, intend to apply to the Court to determine my remuneration.

If you object to my application, you must, within 21 days after being served with this notice, serve on me a notice of objection stating the grounds of objection to the remuneration claimed.

Date:

.....
*Signature of *receiver/*administrator/*liquidator/
*provisional liquidator/*special manager*

* *Omit if not applicable*

Form 17

O.81G, R.67

Summons for public examination

[Title]

A. DETAILS OF SUMMONS

TO: [*name and address of person to be examined*]

You are summoned under *section 596A/*section 596B of the Corporations Law to:

- (a) attend before at [*address of Court*] at *a.m./*p.m. on, and from day to day until excused by the Court, to be examined on oath or affirmation about the examinable affairs of [*name of corporation*]; and
- (b) *to produce at the examination the following books [*specify books — include in a Schedule if necessary*].

Date:

.....
Principal Registrar

B. NOTICE TO PERSON TO BE EXAMINED

The Court may order that the questions put to you and the answers given by you at the examination are to be recorded in writing and signed by you.

If you do not attend the examination in accordance with this summons, without reasonable cause, you may be arrested and imprisoned without further notice.

* *Omit if not applicable*

Seventh Schedule

Form 18

O.81G, R.77

**Summons for appearance in relation to registration of
transfer of interests**

[Title]

TO: [name and address]

You are required to appear before the at [address of Court]
at *a.m./*p.m. on and show cause why the document(s)
specified in the Schedule should not be *delivered up/*produced at the office of
[name of company] at [address of company] within [period as ordered], as
required by the attached notice.

The address for service of the person applying for this summons is [address of
person's legal practitioner or of person].

Date:

.....
Principal Registrar

* Omit if not applicable

Schedule

[description of document(s)]

Part 2 — Matters outside the jurisdiction of a Master

O.81G, R.85

Column 1 Provision	Column 2 Description of matter
Matters under the ASIC Law	
s. 61	Reference by the Commission to the Court of a question of law arising at a hearing of the Commission
s. 70	Request by the Commission for the Court to inquire into non-compliance by a person with an investigation
s. 196	Reference by the Commission to the Court of a question of law arising at a hearing of the Corporations and Securities Panel
s. 201	Request by the Corporations and Securities Panel for the Court to inquire into non-compliance by a person before the Panel
s. 219	Request by the Companies Auditors and Liquidators Disciplinary Board for the Court to inquire into non-compliance by a person before the Board
Matters under the Corporations Law	
s. 230	Application for order prohibiting a person from managing a corporation
Part 5.1	Relating to arrangements and reconstructions (ss. 410-415A)
s. 423	Supervising controller of property of a corporation
s. 536	Supervising liquidator
s. 598	Application for order against person concerned with corporation
s. 599	Application for order prohibiting a person from managing a corporation
Chapter 6	Relating to acquisition of shares (ss. 602-759)
Part 9.4B	Relating to civil and criminal consequences of contravening civil penalty provisions (ss. 1317DA-1317JC)
Part 9.5 except s. 1319	Relating to powers of courts (ss. 1318-1328)

[Seventh Schedule inserted in Gazette 8 May 2000 pp.2214-32.]

Notes

- ¹ This reprint is a compilation as at 1 December 2000 of the *Rules of the Supreme Court 1971* and includes the amendments effected by the other rules referred to in the following Table.

Table of Rules

Citation	Gazettal	Commencement	Miscellaneous
<i>Rules of the Supreme Court 1971</i>	18 November 1971 pp.4397-759	14 February 1972 (see Order 1 rule 2)	
	17 December 1971 p.5266	14 February 1972 (see rule 1)	
	7 June 1972 p.1703	7 June 1972	
	15 June 1973 pp.2247-52	15 June 1972	
	10 September 1973 pp.3427-36	1 October 1973 (see rule 2)	
	9 November 1973 pp.4488-9	1 January 1974 (see rule 2)	
	29 March 1974 pp.1037-40	15 April 1974 (see rule 2)	
	29 March 1974 pp.1041-2 (Erratum 5 April 1974 p.1195)	29 March 1974	
<i>Supreme Court (Costs) Rules 1974</i>	30 August 1974 pp.3242-3	30 August 1974	
	10 January 1975 pp.50-5	1 March 1975 (see rule 2 and <i>Gazette</i> 14 February 1975 p.505)	
	23 May 1975 p.1404	1 June 1975 (see rule 2)	
	3 October 1975 pp.3769-71	1 November 1975 (see rule 2)	
	19 December 1975 pp.4571-7	1 January 1976 (see rule 2)	
	2 April 1976 pp.1039-41	2 April 1976	

Citation	Gazettal	Commencement	Miscellaneous
	14 May 1976 p.1431	1 June 1976 (see rule 2)	
	27 August 1976 pp.3223-6	13 September 1976 (see rule 2)	
	12 November 1976 pp.4275-7	17 June 1977 (see rule 2 and <i>Gazette</i> 17 June 1977 p.1811)	
	24 June 1977 pp.1914-16	1 September 1977 (see rule 2)	
	7 October 1977 pp.3602-3	1 November 1977 (see rule 2)	
<i>Supreme Court (Costs) Rules 1978</i>	13 January 1978 p.117	13 January 1978	
	23 June 1978 pp.2025-30	1 August 1978 (see rule 2)	
	13 October 1978 pp.3698-704	Rules 3, 4, 5, 9, 10 and 11 operative 1 January 1979. Balance 13 October 1978 (see rule 2)	
<i>Supreme Court (Miscellaneous Amendments) Rules 1979</i>	14 December 1979 pp.3869-72	11 February 1980 (see rule 1 and <i>Gazette</i> 8 February 1980 p.383)	
<i>Supreme Court (Costs) Rules 1980</i>	21 March 1980 pp.960-2	21 March 1980	
	13 June 1980 pp.1719-22	1 July 1980 (see rule 2)	
	18 July 1980 pp.2384-8	1 August 1980 (see rule 2 and <i>Gazette</i> 1 August 1980 p.2537)	
	1 August 1980 pp.2550-6	1 August 1980	
	1 August 1980 p.2558	1 August 1980	
	20 November 1981 pp.4724-9	20 November 1981	

Rules of the Supreme Court 1971

Citation	Gazettal	Commencement	Miscellaneous
	2 July 1982 pp.2315-20	2 July 1982	
<i>Supreme Court (Costs) Rules 1982</i>	2 July 1982 pp.2320-1	1 July 1982 (see rule 1)	
	30 July 1982 pp.2946-7	30 July 1982	
	31 March 1983 pp.1090-1	20 June 1983 (see rule 2)	
	23 September 1983 pp.3797-8	23 September 1983	
	20 January 1984 pp.129-34	20 January 1984	
	30 November 1984 pp.3951-6	30 November 1984	
<i>Supreme Court (Costs) Rules 1985</i>	15 February 1985 pp.583-7 (Erratum 22 February 1985 p.658)	15 February 1985	
<i>Supreme Court (Costs) Rules No. 2 1985</i>	13 December 1985 pp.4760-4 (Erratum 3 January 1986 p.11)	1 January 1986	
Amending rules	20 June 1986 pp.2040-5	20 June 1986	Rule 10 ³⁰ transitional
<i>Rules of the Supreme Court 1971 Amendment Rules (No. 2) 1986</i>	4 July 1986 pp.2280-6	4 July 1986	
<i>Rules of the Supreme Court 1971 Amendment Rules 1987</i>	18 December 1987 pp.4456-7	1 January 1988 (see rule 3)	
<i>Supreme Court Amendment Rules 1988</i>	1 July 1988 pp.2140-2	1 July 1988 (see rule 2 and <i>Gazette</i> 24 June 1988 p.1995)	
<i>Supreme Court Amendment Rules 1989</i>	15 December 1989 p.4520	1 January 1990 (see rule 2)	

Citation	Gazettal	Commencement	Miscellaneous
<i>Supreme Court Amendment Rules 1990</i>	30 March 1990 pp.1573-4	30 March 1990	
<i>Supreme Court Amendment Rules (No. 2) 1990</i>	23 February 1990 pp.1153-6	23 February 1990	
<i>Supreme Court Amendment Rules (No. 3) 1990</i>	17 August 1990 pp.4071-8	1 September 1990 (see rule 2)	
<i>Supreme Court Amendment Rules (No. 4) 1990</i>	8 February 1991 pp.582-8	8 March 1991 (see rule 2 and <i>Gazette</i> 8 March 1991 pp. 1029-30)	
<i>Supreme Court Amendment Rules (No. 6) 1990</i>	16 November 1990 pp.5698-9	16 November 1990	
<i>Supreme Court Amendment Rules (No. 7) 1990</i>	9 November 1990 p.5526	9 November 1990	
<i>Supreme Court Amendment Rules (No. 8) 1990</i>	30 November 1990 pp.5900-1	30 November 1990	
<i>Supreme Court Amendment Rules 1991</i>	5 April 1991 pp.1397-8	5 April 1991	
<i>Supreme Court Amendment Rules (No. 2) 1991</i>	19 April 1991 pp.1714-19	1 June 1991 (see rule 2 and <i>Gazette</i> 17 May 1991 p.2455)	
<i>Supreme Court Amendment Rules (No. 3) 1991</i>	5 April 1991 pp.1398-401	5 April 1991	
<i>Supreme Court Amendment Rules (No. 4) 1991</i>	7 February 1992 pp.676-93	7 February 1992	
<i>Supreme Court Amendment Rules (No. 6) 1991</i>	28 February 1992 pp.995-8	28 February 1992	

Rules of the Supreme Court 1971

Citation	Gazettal	Commencement	Miscellaneous
<i>Supreme Court Amendment Rules 1992</i>	5 June 1992 pp.2278-82	5 June 1992	
<i>Supreme Court Amendment Rules (No. 3) 1992</i>	21 August 1992 pp.4121-4	1 September 1992 (see rule 2)	
<i>Supreme Court Amendment Rules (No. 4) 1992</i>	30 October 1992 pp.5309-10	30 October 1992	
<i>Supreme Court Amendment Rules (No. 5) 1992</i>	30 October 1992 pp.5310-11	30 October 1992	
<i>Supreme Court Amendment Rules (No. 6) 1992</i>	26 January 1993 pp.823-30	26 January 1993	
<i>Supreme Court Amendment Rules 1993</i>	26 March 1993 pp.1840-6	26 March 1993	
<i>Supreme Court Amendment Rules (No. 2) 1993</i>	20 April 1993 pp.2103-4	20 April 1993	
<i>Supreme Court Amendment Rules (No. 3) 1993</i>	29 June 1993 pp.3166-7	29 June 1993	
<i>Supreme Court Amendment Rules (No. 4) 1993</i>	17 September 1993 pp.5054-61	17 September 1993	
<i>Supreme Court Amendment Rules (No. 6) 1993</i>	1 December 1993 pp.6451-2	1 December 1993 (see rule 2 and <i>Gazette</i> 30 November 1993 p.6439)	
<i>Supreme Court Amendment Rules 1994</i>	1 March 1994 pp.784-93	1 March 1994	Rule 14 transitional ²³
<i>Supreme Court Amendment Rules (No. 2) 1994</i>	1 July 1994 pp.3238-9	1 July 1994	

Citation	Gazettal	Commencement	Miscellaneous
<i>Supreme Court Amendment Rules (No. 3) 1994</i>	22 July 1994 pp.3746-8	22 July 1994	
<i>Supreme Court Amendment Rules (No. 4) 1994</i>	28 June 1994 pp.3047-141	1 August 1994 (see rule 2)	Rule 5 inserts Rules 117 repeal and 118 savings ³¹
<i>Supreme Court Amendment Rules (No. 5) 1994</i>	26 August 1994 pp.4410-13	26 August 1994	
<i>Supreme Court Amendment Rules (No. 6) 1994</i>	9 September 1994 p.4630	9 September 1994	
<i>Supreme Court Amendment Rules (No 7) 1994</i>	26 August 1994 pp.4414-15	26 August 1994	
<i>Supreme Court Amendment Rules (No. 8) 1994</i>	11 November 1994 pp.5701-2	11 November 1994	
<i>Supreme Court Amendment Rules 1995</i>	24 January 1995 pp.269-72	24 January 1995	
<i>Supreme Court Amendment Rules (No. 2) 1995</i>	24 January 1995 pp.272-3	24 January 1995	
<i>Supreme Court Amendment Rules (No. 4) 1995</i>	7 July 1995 p.2819	7 July 1995	
<i>Supreme Court Amendment Rules (No. 5) 1995</i>	24 October 1995 pp.4917-21	24 October 1995	
<i>Supreme Court Amendment Rules (No. 6) 1995</i>	10 November 1995 pp.5246-7	10 November 1995	
<i>Supreme Court Amendment Rules 1996</i>	9 August 1996 pp.3949-51	9 August 1996	

Rules of the Supreme Court 1971

Citation	Gazettal	Commencement	Miscellaneous
<i>Supreme Court Amendment Rules (No. 3) 1996</i>	13 September 1996 p.4568	7 April 1997 (see rule 2 and <i>Gazette</i> 8 March 1997 p.1529)	
<i>Supreme Court Amendment Rules (No. 4) 1996</i>	28 October 1996 pp.5671-712	1 November 1996 (see rule 2)	
<i>Supreme Court Amendment Rules (No. 2) 1997</i>	1 July 1997 pp.3258-60	21 July 1997 (see rule 2 and correction in <i>Gazette</i> 4 July 1997 p.3480)	Disallowed on 10 March 1998 published in <i>Gazette</i> 13 March 1998 p.1389
<i>Supreme Court Amendment Rules (No. 1) 1998</i>	6 March 1998 p.1177	6 March 1998	
<i>Supreme Court Amendment Rules (No. 2) 1998</i>	6 March 1998 p.1178	6 March 1998	
<i>Supreme Court Amendment Rules 1999</i>	16 July 1999 pp.3187-200	16 July 1999	Rule 12 of these amendments did not come into operation because of an error in the reference to the provision to be amended
<i>Supreme Court Amendment Rules (No. 2) 1999</i>	16 July 1999 p.3201	8 January 2000 (see rule 2 and <i>Gazette</i> 7 January 2000 p.19)	
<i>Supreme Court Amendment Rules (No. 4) 1999</i>	26 November 1999 pp.5903-5	26 November 1999	
<i>Supreme Court Amendment Rules (No. 5) 1999</i>	5 November 1999 pp.5625-33	5 November 1999	
<i>Supreme Court Amendment Rules 2000</i>	10 March 2000 p.1121	10 March 2000	

Citation	Gazettal	Commencement	Miscellaneous
<i>Supreme Court Amendment Rules (No. 2) 2000</i>	8 May 2000 pp.2159-232	1 June 2000 (see rule 2)	
<i>Supreme Court Amendment Rules (No. 3) 2000</i>	30 June 2000 pp.3417-19	30 June 2000	

- ² Repealed by the *Acts Amendment and Repeal (Family Court) Act 1997* (No. 41 of 1997) s.38.
- ³ Under section 69 of the *Acts Amendment (Ministry of Justice) Act 1993* (No. 31 of 1993) this is to be read as a reference to the Ministry of Justice.
- ⁴ The Rules of the Supreme Court (England) R.S.C. Revision 1965.
- ⁵ Repealed by the *Interpretation Act 1984* section 77. Now see section 62 of the *Interpretation Act 1984* (No. 12 of 1984).
- ⁶ Rule 12 of rules published in *Gazette* 10 January 1975 p. 54, read as follows —

“

12. Saving

A judgment or order for recovery or delivery up of possession of land given or made before the day on which these rules come into operation may be enforced in the manner in which it was enforceable before that day and leave to enforce any such judgment or order shall not be required.

”

- ⁷ The Fourth Schedule no longer has effect (except for work done before the first determination under s.58W of the *Legal Practitioners' Act 1993*. The latest of these was the *Supreme Court Costs Scale 1991* published in the *Gazette* on 27 March 1991).
- ⁸ Section 17E of the *Bills of Sale Act 1899* was repealed by the *Bills of Sale Amendment Act 1986* (No. 20 of 1986), section 4.
- ⁹ Short title subsequently amended to the *Tobacco Sellers Licensing Act 1975*.
- ¹⁰ Repealed by the *Statutes (Repeals and Minor Amendments) Act 1997* (No. 57 of 1997).
- ¹¹ Section 660 was repealed by the *Local Government Act 1995* (No. 74 of 1995).
- ¹² Title as changed by section 6 of the *Legal Practitioners Amendment (Disciplinary and Miscellaneous Provisions) Act 1992* (No. 48 of 1992) substituted under section 7(3)(h) of the *Reprints Act 1984*.

- ¹³ Title changed under section 7(3)(h) of the *Reprints Act 1984* to give effect to section 5 of the *Liquor Amendment Act (No. 2) 1986* (No. 97 of 1986) and section 8 of the *Liquor Licensing Act 1988* (No. 54 of 1988).
- ¹⁴ Repealed by the *Housing Act 1980* (No. 58 of 1980) section 3.
- ¹⁵ In respect of matters arising after 1 July 1982 and before 1 January 1991 the operation of the *Companies Act 1961* is subject to the provisions of Part III of the *Companies (Application of Laws) Act 1981*. Also see section 28 of the *Companies (Consequential Amendments) Act 1982*. In respect of matters arising after 1 January 1991, the operation of the *Companies Act 1961* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990).
- ¹⁶ This Rule is merely declaratory of an Order in Council gazetted 16 September 1983 whereby the vacations of the Supreme Court are regulated.
- ¹⁷ Title as changed by rule 3 of the *Barristers' Board Amendment Rules 1994* published in the *Gazette* of 18 March 1994 p.1043 substituted under section 7(3)(gb) of the *Reprints Act 1984*.
- ¹⁸ Short title as changed by section 5 of the *Acts Amendment and Repeal (Transport Co-ordination) Act 1985* (No. 54 of 1985) substituted under section 7(3)(gb) of the *Reprints Act 1984*.
- ¹⁹ Under the *Alterations of Statutory Designations Order 1996*, references to the Commissioner of State Taxation in any law ... shall be construed as references to the Commissioner of State Revenue.
- ²⁰ Under section 112(1) of the *Public Sector Management Act 1994* this is to be read as a reference to the *Public Sector Management Act 1994* (No 31 of 1994).
- ²¹ Short title as changed by section 1(3) of the *Debtors Act Amendment Act 1965* (No. 4 of 1965) substituted under section 7(3)(gb) of the *Reprints Act 1984*.
- ²² Repealed by *The Environmental Protection Act 1986* (No. 77 of 1986).
- ²³ Rule 14 of the *Supreme Court Amendment Rules 1994* published in the *Gazette* on 1 March 1994 at p.789 reads as follows:

“

14. Transitional

Any Rules made under section 27 of the *Service and Execution of Process Act 1901* of the Commonwealth that were in force immediately before the commencement of the *Service and Execution of Process (Transitional Provisions and Consequential Amendments) Act 1992* of the Commonwealth continue to apply with respect to any matter commenced or action taken under the *Service and Execution of Process Act 1901* of the Commonwealth as if that Act had not been repealed.

”

- 24 There is no longer a Board under section 6 of the Act.
- 25 Title amended under section 7(5)(a) of the *Reprints Act 1984* to give effect to section 35(3) of the *Director of Public Prosecutions Act 1991* (No. 12 of 1991).
- 26 Repealed by section 3 of the *Service and Execution of Process (Transitional Provisions and Consequential Amendments) Act 1992* of the Commonwealth (No. 166 of 1992). Now see the *Service and Execution of Process Act 1992* of the Commonwealth.
- 27 The *Colonial Courts of Admiralty Act 1890* was repealed, so far as it is part of the law of the Commonwealth or of an external Territory, by section 44 (1) of the *Admiralty Act 1988* of the Commonwealth.
- 28 Order 74 repealed in *Gazette* 30 October 1992 p.5310.
- 29 This should be a reference to section 41(6) of the *District Court of Western Australia Act 1969*
- 30 Rule 10 of the rules published in the *Gazette* on 20 June 1986, reads as follows —

“

10.

- (1) The principal rules as amended by these rules apply to and in relation to agreements and arbitrations to which the Act applies.
- (2) The principal rules in force immediately before the commencement of these rules continue to apply to and in relation to arbitrations commenced before the commencement of the Act.

”

- 31 Rules 117 and 118 inserted by Rule 5 of the *Supreme Court Amendment Rules (No. 4) 1994* in the *Gazette* of 28 June 1994 at p.3092 read as follows —

“

117. Repeal

The *Supreme Court (Corporations Law) (Transitional) Rules 1991* are repealed.

118. Savings

Notwithstanding Rule 117 the *Supreme Court (Corporations Law) (Transitional) Rules 1991* shall continue to apply to all proceedings under the Corporations Law or the Code commenced before the coming into operation of this Order.

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