

CROWN LAW

CW301

**SUPREME COURT ACT 1935
SUPREME COURT AMENDMENT RULES (NO. 6) 1992**

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules (No. 6) 1992*.

Principal rules

2. In these rules the *Rules of the Supreme Court 1971* are referred to as the principal rules.

[* Reprinted in the *Gazette of 18 March 1986* at pp. 779-1100
For amendments to 9 December 1992 see 1991 *Index to Legislation of Western Australia*, pp.504-5 and *Gazettes of 7 and 28 February, 5 June, 21 August 1992 and 30 October 1992.*]

Order 17 amended

3. Order 17 of the principal rules is amended in Rule 12 (2) by deleting "4 days" and substituting the following —

" 14 days ".

Order 44A inserted

4. After Order 44 of the principal rules the following Order is inserted —

" **ORDER 44A**

**REGISTRATION AND ENFORCEMENT OF JUDGMENTS
UNDER THE FOREIGN JUDGMENTS ACT 1991
OF THE COMMONWEALTH**

FOREIGN JUDGMENTS

Interpretation

1. Unless the contrary intention appears, expressions used in this Order have, in relation to proceedings taken under the *Foreign Judgments Act 1991* of the Commonwealth, the same meaning in this Order as they have in that Act.

Application

2. This Order applies to the registration and enforcement of judgments to which Part 2 of the Act applies.

Application for registration

3. (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 _____ 19 ____".

(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.

Evidence in support of application

4. (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.

Security for costs

5. 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.

Order for registration

6. (1) An order for registration of a judgment shall be drawn up by, or on behalf of, the judgment creditor.

- (2) The order need not be served on the judgment debtor.

(3) The order shall state the period after service of the notice prescribed by Rule 8 within which an application may be made to set aside the registration.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

Register to be kept

7. There shall be kept in the Central Office of the Supreme Court a register of the judgments ordered to be registered under the Act.

Notice of registration

8. (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 1901* 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.

Indorsement of service

9. (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.

Application to set aside registration

10. (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.

Enforcement

11. (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.

Determination of certain questions

12. 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.

Certified copy of judgment obtained in this State

13. (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 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.

Order 80A inserted

5. After Order 80 of the principal rules the following Order is inserted —

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ORDER 80A

APPLICATIONS UNDER THE *ROYAL COMMISSION (CUSTODY OF RECORDS) ACT 1992*

Interpretation

1. 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.

Applications to Registrar

2. (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.

(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.

Form of Order

3. (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. ”.

Order 82 amended

6. Order 82 of the principal rules is amended —

(a) in Rule 1 —

(i) by inserting after the Rule designation “1.” the paragraph designation “ (1) ”; and

(ii) by deleting “Act,” and substituting the following —

“ Act and paragraph (2), ”;

(b) by inserting the following paragraph —

“ (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. ”;

and

(c) in Rule 3 by inserting after paragraph (2) the following paragraph —

“ (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. ”.

The Fifth Schedule amended

7. The Fifth Schedule to the principal rules is amended in PART III item 21 by deleting the note and substituting the following note —

“ NOTE: For the purposes of this item —

- (a) with respect to land, or an interest in land, the service of the writ of *feri facias* on the Registrar of Titles under section 133 of the *Transfer of Land Act 1893*;
- (b) the seizure of chattels in the possession or apparent possession of the judgment debtor; or
- (c) the seizure of books of account in the possession of the judgment debtor,

shall be or be deemed to be “seizure” .

”

Dated the 15th day of December 1992.

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