

Supreme Court Act 1935

Supreme Court Amendment Rules 2018

Made by the judges of the Supreme Court.

1. Citation

These rules are the *Supreme Court Amendment Rules 2018*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on 1 March 2018.

3. Rules amended

These rules amend the *Rules of the Supreme Court 1971*.

4. Order 1 amended

- (1) In Order 1 rule 4(1) delete the definition of *file*.
- (2) In Order 1 rule 4(1) insert in alphabetical order:

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

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

EDS means the Court's electronic document system;

Supreme Court Amendment Rules 2018**r. 4**

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

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

filed document means —

- (a) a document that —
 - (i) has been filed with the Court; and
 - (ii) has not been refused by the Court; and
 - (iii) has been officially recorded by the Court as having been filed;
- and
- (b) any other document officially recorded by the Court as being a filed document;

- (3) In Order 1 rule 4(1) in the definition of *Cause Book* delete “Office” and insert:

Office, in the manner directed by the Chief Justice from time to time,

- (4) Delete Order 1 rule 4(2).
- (5) After Order 1 rule 7 insert:

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

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

Supreme Court Amendment Rules 2018

r. 5

(b) the person is an authorised user of the EDS,
the Court may give the document to the person by
means of the EDS.

(2) If —

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

(b) the person is an authorised user of the EDS,
the person may give the document to the Court only by
filing the document electronically unless these rules
provide otherwise in respect of the document.

5. Order 3 amended

(1) In Order 3 rule 4 delete “Where” and insert:

(1) Where

(2) At the end of Order 3 rule 4 insert:

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

6. Order 4A amended

(1) In Order 4A rule 5B(1)(b) and (c) delete “attach to the letter”
and insert:

file with the letter as an attachment

Supreme Court Amendment Rules 2018**r. 7**

- (2) Delete Order 4A rule 5B(5) and insert:
 - (5) Order 67A rule 2(4) and (5) do not apply to a party who fails to comply with subrule (1)(a).
- (3) In Order 4A rule 5C(b) delete “Order 67 rule 18A” and insert:

Order 67A Division 2

7. Order 5 amended

- (1) In Order 5 rule 7 delete “The” and insert:
 - (1) The
- (2) At the end of Order 5 rule 7 insert:
 - (2) Subrule (1) does not apply if the writ is filed electronically.
- (3) Delete Order 5 rule 8 and insert:

8. Writ to be recorded when issued

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

Supreme Court Amendment Rules 2018

r. 8**8. Order 7 amended**

After Order 7 rule 3(4) insert:

- (5) Subrule (6) applies if —
 - (a) an original writ is sealed and issued to the plaintiff by means of the EDS; or
 - (b) the plaintiff has lawful access to an original writ in the EDS.
- (6) If this subrule applies —
 - (a) the plaintiff may print from the EDS 1 or more copies of the original writ; and
 - (b) a printed copy may be treated as a concurrent writ despite subrule (2) not having been complied with.

9. Order 8 amended

- (1) In Order 8 rule 2(1) delete “filed in the Central Office,” and insert:

filed,
- (2) Delete Order 8 rule 3.
- (3) In Order 8 rules 4, 6(3)(b) and 7(1)(b) delete “in the Central Office”.

Supreme Court Amendment Rules 2018**r. 10**

10. Order 10 amended**(1)** In Order 10 rule 9(4):

- (a) delete “lodge in the Central Office” and insert:

file

- (b) delete “and an additional copy thereof” and insert:

and, unless the request and the copy of the writ are filed electronically, an additional copy of the writ

(2) In Order 10 rule 9(5) delete “lodged” and insert:

filed

(3) In Order 10 rule 11 delete “lodged” and insert:

filed

11. Order 11 amended

After Order 11 rule 2A(2) insert:

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

Supreme Court Amendment Rules 2018

r. 12**12. Order 11A amended**

(1) After Order 11A rule 4(1) insert:

(1A) If the local judicial document is a document of the Court, the application, and any other document to be filed for the purposes of this rule, must be filed electronically.

(1B) If the local judicial document is not a document of the Court, the application, and any other document to be filed for the purposes of this rule, cannot be filed electronically.

(2) In Order 11A rule 4(2) delete “3 copies of each of the following documents —” and insert:

each of the following documents (if the application is filed electronically) or 3 copies of each of those documents (if the application is not filed electronically) —

(3) In Order 11A rule 7(1) delete “to the registrar” and insert:

into the Central Office

(4) After Order 11A rule 13(3) insert:

(4) A request for service referred to in subrule (2), and any other document to be filed for the purposes of this rule, cannot be filed electronically.

Supreme Court Amendment Rules 2018**r. 13**

- (5) In Order 11A rule 16(1) and (2) delete “lodge with the Court” and insert:

file

- (6) In Order 11A rule 16(3) delete “lodged” and insert:

filed

- (7) After Order 11A rule 16(4) insert:

- (5) An affidavit as to service to be filed in accordance with this rule cannot be filed electronically.

13. Order 12 amended

In Order 12 rule 3 delete “enter the appearance in the Cause Book,” and insert:

record the entry of appearance,

14. Order 20 amended

- (1) Delete Order 20 rule 7(4)(b) and insert:

- (b) in any other case, with the name or firm and address for service of the solicitor by whom it was filed.

- (2) In Order 20 rule 23(1) delete “in the Central Office”.

Supreme Court Amendment Rules 2018

r. 15

- (3) In Order 20 rule 23(2) delete “filed in the Central Office.” and insert:

filed.

- (4) In Order 20 rule 24(1):

- (a) delete “lodge” and insert:

file

- (b) delete “lodged” and insert:

filed

- (5) In Order 20 rule 24(2) delete “lodge” (each occurrence) and insert:

file

Note: The heading to amended Order 20 rule 24 is to read:

Failure to file Preliminary Act

15. Order 21 amended

- (1) Delete Order 21 rule 5 and insert:

5. Amending writ or pleading with leave

- (1) This rule is subject to —

- (a) Order 18 rules 6, 7 and 8; and
(b) Order 20 rule 19(2) to (5).

Supreme Court Amendment Rules 2018**r. 16**

- (2) The Court may at any stage of the proceedings, without determining whether any relevant period of limitation has expired, allow the plaintiff to amend the plaintiff's writ, or any party to amend that party's pleading, on any terms as to costs or otherwise that may be just and in the manner (if any) that the Court may direct.

- (2) In Order 21 rule 9(1) delete "red, or in such other manner as" and insert:

any manner that

- (3) In Order 21 rule 9(2):

- (a) delete "red or in such other manner as" and insert:

any manner that

- (b) delete "causing it to be re-sealed and filing a copy thereof." and insert:

by filing a copy and the request that it be re-sealed.

16. Order 31 amended

- (1) In Order 31 rule 3(2):

- (a) delete "lodge at the Central Office" and insert:

file

Supreme Court Amendment Rules 2018

r. 17

(b) delete “lodge such” and insert:

file those

(2) In Order 31 rule 5(1) delete “an office” and insert:

a sealed

17. Order 33 amended

(1) In Order 33 rule 14(1) delete “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” and insert:

file as a bundle

(2) In Order 33 rule 14(2) and (3) delete “2 further copies” and insert:

a further copy

(3) In Order 33 rule 14(4) delete “delivered or”.

18. Order 34 amended

(1) In Order 34 rule 5(5) delete “submit” and insert:

file

Supreme Court Amendment Rules 2018**r. 19**

- (2) In Order 34 rule 6 delete “furnishes particulars to the plaintiff” and insert:

files and serves on the plaintiff particulars

- (3) In Order 34 rule 14(5) delete “give a written undertaking to the Court” and insert:

file a written undertaking

19. Order 36 amended

- (1) In Order 36 rule 8(1) delete “Office copies” and insert:

Copies

- (2) In Order 36 rule 8(2) delete “an office” and insert:

a true

20. Order 36B amended

- (1) After Order 36B rule 2(3) insert:

- (3A) If the issuing officer issued the subpoena by means of the EDS —

- (a) the issuing party may print from the EDS 1 or more copies of the subpoena; and

Supreme Court Amendment Rules 2018

r. 21

- (b) a printed copy may be treated as a copy of the subpoena authenticated in accordance with subrule (3).

(2) After Order 36B rule 6(5) insert:

- (5A) The addressee cannot comply with the requirement under subrule (4)(b) to deliver or send the subpoena or other document to the Registry by filing it electronically.

(3) After Order 36B rule 8B(3) insert:

- (3A) A request under rule 8 or 8A cannot be filed electronically unless —
 - (a) the request is made by a party; or
 - (b) the Principal Registrar has given approval for the request to be filed electronically.

21. Order 37 amended

(1) After Order 37 rule 2(9) insert:

- (9A) If 1 or more volumes of an affidavit and its attachments are filed electronically, subrule (9) does not require them to be bound.

(2) In Order 37 rule 2(10) delete “attachments” and insert:

attachments, if not filed electronically,

Supreme Court Amendment Rules 2018**r. 22**

(3) After Order 37 rule 2(10) insert:

(11) Except in a case where the Court allows otherwise, a volume of an affidavit and its attachments, if filed electronically, must not exceed 250 pages.

(4) After Order 37 rule 9(2) insert:

(3) An exhibit to an affidavit cannot be filed electronically.

22. Order 38 amended

(1) In Order 38 rule 7 delete “The” and insert:

(1) The

(2) At the end of Order 38 rule 7 insert:

(2) The party must supply the copies in the format, or by the means, required by the examiner.

(3) In Order 38 rule 11(9) delete “sent by him to the Central Office and shall be filed therein.” and insert:

filed by the examiner.

Supreme Court Amendment Rules 2018

r. 23

(4) After Order 38 rule 11(9) insert:

(10) Unless the Principal Registrar has given approval for it to be filed electronically, the deposition cannot be filed electronically by the examiner.

(5) In Order 38 rule 17(1) delete “transmit any deposition, to be filed at the Central Office,” and insert:

file any deposition

23. Order 39 amended

(1) After Order 39 rule 2(3) insert:

(4) An application, affidavit or summons referred to in this rule cannot be filed electronically.

(2) After Order 39 rule 5(1) insert:

(1A) The deposition cannot be filed electronically by the examiner.

(3) After Order 39 rule 6(3) insert:

(4) The deposition and document referred to in subrule (3)(b) cannot be filed electronically by the examiner.

Supreme Court Amendment Rules 2018**r. 24**

24. Order 39A amended

- (1) Delete Order 39A rule 4(3) and insert:
 - (3) The filed application must be headed with the heading on the order of the Court granting leave to serve the subpoena.
- (2) Delete Order 39A rule 4(5).

25. Order 40 amended

- (1) In Order 40 rule 3(1) delete “send his report to the Court” and insert:

file the expert’s report
- (2) After Order 40 rule 3(1) insert:
 - (1A) Unless the Principal Registrar has given approval for it to be filed electronically, the Court expert’s report cannot be filed electronically.

26. Order 42 amended

- (1) After Order 42 rule 1(1) insert:
 - (1A) The book must be kept in the manner directed by the Chief Justice from time to time.
- (2) In Order 42 rule 6 delete “in the Central Office”.

Supreme Court Amendment Rules 2018

r. 27

- (3) In Order 42 rule 7 delete “his solicitor or agent.” and insert:

the defendant’s solicitor.

- (4) In Order 42 rule 9(1) delete “filed in the Central Office.” and insert:

filed.

27. Order 43 amended

- (1) In Order 43 rule 4(1) delete “in the Registry of the Court as a record.” and insert:

by the Court as a record in the manner directed by the Chief Justice from time to time.

- (2) In Order 43 rule 4(2) delete “by the registrar”.

- (3) After Order 43 rule 4(4) insert:

- (5) If an order is issued by means of the EDS —
- (a) an authorised user may print from the EDS 1 or more copies of the order; and
 - (b) a printed copy may be treated as a duplicate of the order for the purposes of this rule.

- (4) In Order 43 rule 5 delete “An” and insert:

- (1) An

Supreme Court Amendment Rules 2018**r. 27**

- (5) At the end of Order 43 rule 5 insert:
- (2) The registrar may dispense with the requirement under subrule (1) to produce the duplicate or the duplicate last issued, subject to any conditions the registrar considers appropriate.
- (6) In Order 43 rule 6(1):
- (a) delete “lodge a draft thereof in the Central Office” and insert:
- file a draft of the judgment or order
- (b) delete “lodgment” and insert:
- filing
- (7) In Order 43 rule 6(2) delete “lodged” and insert:
- filed
- Note: The heading to amended Order 43 rule 6 is to read:
- Draft judgment or order to be filed**
- (8) Delete Order 43 rule 14(1) and insert:
- (1) A judgment or order, when settled and passed, is to be filed by the party entering or extracting it.

Supreme Court Amendment Rules 2018

r. 28

- (9) In Order 43 rule 15 delete “settled by the registrar,” and insert:

settled,

- (10) In Order 43 rule 16(2):

- (a) delete “registrar may” and insert:

registrar, a master or a judge may

- (b) delete “which in his opinion” and insert:

which, in the opinion of the registrar, master or judge,

28. Order 44A amended

Delete Order 44A rule 7 and insert:

7. Record to be kept of registered judgments

A record must be kept at the Supreme Court, in the manner directed by the Chief Justice from time to time, of the judgments ordered to be registered under the Act.

29. Order 45 amended

In Order 45 rule 5(3):

- (a) delete “lodge the account at the Central Office,” and insert:

file the account,

Supreme Court Amendment Rules 2018**r. 30**

(b) delete “lodged” and insert:

filed

30. Order 51 amended

(1) In Order 51 rule 3(4) delete “filed in the Central Office,” and insert:

filed

(2) After Order 51 rule 5(1) insert:

(1A) Unless the Principal Registrar has given approval for them to be filed electronically, the accounts (including the final accounts referred to in rule 8) cannot be filed electronically by a receiver.

(3) Delete Order 51 rule 8 and insert:

8. Final accounts to be filed

When a receivership has been completed, the receiver must file the receiver’s final accounts.

31. Order 53 amended

(1) In Order 53 rule 7 delete “The” and insert:

(1) The

Supreme Court Amendment Rules 2018

r. 32

(2) At the end of Order 53 rule 7 insert:

(2) Unless the Principal Registrar has given approval for it to be filed electronically, the opinion given by counsel cannot be filed electronically.

32. Order 56 amended

(1) In Order 56 rule 10(3) delete “in the Central Office”.

(2) In Order 56 rule 18 delete “Unless” and insert:

(1) Unless

(3) At the end of Order 56 rule 18 insert:

(2) If the writ is issued by means of the EDS —

- (a) the applicant may print from the EDS 1 or more copies of the writ; and
- (b) a printed copy may be treated as the original writ for the purposes of subrule (1).

(4) In Order 56 rule 20(1) delete “writ in the Central Office,” and insert:

writ,

Supreme Court Amendment Rules 2018**r. 33**

33. Order 57 amended

(1) In Order 57 rule 5 delete “When” and insert:

(1) When

(2) At the end of Order 57 rule 5 insert:

(2) The writ, or a copy of it, cannot be filed electronically.

(3) After Order 57 rule 7(3) insert:

(4) If the writ is issued by means of the EDS —

(a) the applicant may print from the EDS 1 or more copies of the writ; and

(b) a printed copy may be treated as the writ for the purposes of this rule.

34. Order 60A amended

(1) After Order 60A rule 1(1)(a) insert:

(b) under Order 67B, the Court’s powers in relation to access to information, records and other things;

(2) Delete Order 60A rule 1(2).

Supreme Court Amendment Rules 2018

r. 35

- (3) After Order 60A rule 2 insert:

2A. Registrars to deal with applications within their jurisdiction

If an application made to the Court requests the exercise of jurisdiction or a power of the Court that under this Order is exercisable by a registrar, the application must be dealt with by a registrar unless —

- (a) under rule 3 the proceedings have been referred to a judge or master; or
- (b) a judge, master or registrar has granted leave for the application to be dealt with by a judge or master.

- (4) In Order 60A rule 4(3):

- (a) in paragraph (c) delete “officer.” and insert:

officer; or

- (b) after paragraph (c) insert:

- (d) made under Order 67A; or
- (e) to which Order 67B rule 17 applies.

35. Order 61 amended

- (1) In Order 61 rule 18(2)(b) delete “produce to the Court” and insert:

file

Supreme Court Amendment Rules 2018**r. 36**

(2) Delete Order 61 rule 18(5) and (6) and insert:

- (5) A person claiming to be a creditor need not make an affidavit or attend in support of the claim, unless the person has been served with a notice under subrule (2)(a).
- (6) Unless the Court otherwise directs, a person claiming to be a secured creditor must file evidence of the security interest claimed.

(3) In Order 61 rule 21(2) delete “it in the Central Office.” and insert:

it.

36. Order 65 amended

In Order 65 rule 19(5) delete “give a written undertaking to the Court” and insert:

file a written undertaking

37. Order 65C amended

(1) In Order 65C rule 7(1)(b) delete “lodge at the Central Office” and insert:

file

Supreme Court Amendment Rules 2018

r. 38

- (2) In Order 65C rule 11(1) delete “filed in the Central Office.” and insert:

filed.

38. Order 66 amended

- (1) In Order 66 rule 33 delete “and also the name and address of the solicitor (if any) for whom he is agent,”.
- (2) In Order 66 rule 36 delete “lodge” and insert:

file

Note: The heading to amended Order 66 rule 36 is to read:

Vouchers as to disbursements to be filed

- (3) In Order 66 rule 37 delete “leave” and insert:

file

- (4) In Order 66 rule 39 delete “carry in” and insert:

file

- (5) In Order 66 rule 40 delete “bring in” and insert:

file

Supreme Court Amendment Rules 2018**r. 39**

39. Order 67 amended

- (1) In Order 67 rule 4 delete “to be used in the Central Office” and insert:

of the Court

- (2) In Order 67 rule 6:

- (a) delete “Central Office” (1st occurrence) and insert:

Court

- (b) delete “office” and insert:

true

- (c) delete “from the Central Office,” and insert:

by the Court,

- (d) delete “of the Central Office,” and insert:

of the Court,

- (3) Delete Order 67 rule 8 and insert:

8. Indexes to filed documents

Proper indexes or calendars to the files or bundles of all documents that are filed must be kept, in the manner directed by the Chief Justice from time to time, so that they may be conveniently referred to when required.

Supreme Court Amendment Rules 2018

r. 39

- (4) In Order 67 rule 9(1):
 - (a) delete “in the Central Office”;
 - (b) delete “under rule 20,” and insert:

electronically,
- (5) After Order 67 rule 9(1) insert:
 - (1A) A document filed electronically may be sealed by means of the EDS.
- (6) In Order 67 rule 9(2):
 - (a) delete “Central Office” (1st occurrence) and insert:

manner directed by the Chief Justice from time to time
 - (b) delete “at the Central Office”.
- (7) Delete Order 67 rules 10 and 11 and insert:

10. Custody of documents and things
 - (1) The Principal Registrar has custody of all —
 - (a) filed documents; and
 - (b) things and other documents kept, left or deposited in the Central Office, whether or not due to a Court order.
 - (2) The Principal Registrar must ensure the things referred to in subrule (1) are kept in safe custody.
- (8) In Order 67 rule 15 delete “office”.

Supreme Court Amendment Rules 2018**r. 40**

- (9) Delete Order 67 rules 18A, 18B, 19, 20 and 21 and insert:

19. Principal Registrar may declare EDS unavailable

- (1) The Principal Registrar may, in any manner the Principal Registrar thinks fit, declare that the EDS is unavailable for use for a period set by the Principal Registrar.
- (2) The Principal Registrar, in writing, may delegate the Principal Registrar's function under this rule to 1 or more other officers of the Court.
- (3) For the purposes of these rules, a declaration made by a delegate of the Principal Registrar under this rule is taken to be a declaration made by the Principal Registrar.

40. Orders 67A and 67B inserted

After Order 67 insert:

Order 67A — Filing documents

Division 1 — Preliminary matters

1. Terms used

In this Order —

complying document means a document the form and content of which comply with these rules and any Court order or direction;

deliver means deliver by hand;

Practice Directions means practice directions issued by the Court from time to time.

Supreme Court Amendment Rules 2018

r. 40**Division 2 — Filing documents****2. General rules about filing documents**

- (1) A person who is required by these rules or the Court to file a document, or who wants to do so, must, in accordance with this Order, present a complying document to the Court for filing.
- (2) The complying document must be presented together with any fee required to be paid when filing it or with the information the Court needs to enable the Court to be paid the fee.
- (3) A person must not present more than 1 copy of a document to the Court for filing unless these rules or the Court requires more than 1 copy to be filed.
- (4) If a party is required by these rules or the Court to file a document, the party cannot, without the Court's leave, refer to or rely on the document in any hearing or in any other filed document unless it has been filed.
- (5) If under subrule (4) a party is given leave, the party must file the document as soon as practicable after the leave is given.
- (6) The Principal Registrar may refuse to file a document that is presented for filing if it is not a complying document or has been presented in contravention of this Order or a direction given under rule 3(4).

3. Documents must be filed using EDS

- (1) To present a complying document to the Court for filing, a person must present it electronically using the EDS and in accordance with rule 4 unless —
 - (a) the EDS has been declared unavailable for use under Order 67 rule 19, is otherwise

Supreme Court Amendment Rules 2018**r. 40**

- unavailable for use or does not permit the document to be presented; or
 - (b) these rules state that the document cannot be filed electronically; or
 - (c) the document is filed for the purposes of proceedings or matters referred to in Order 1 rule 3(2) or (3); or
 - (d) the document is filed for the purposes of Order 75A or 81H; or
 - (e) the document is filed for the purposes of a CA matter, as defined in the *Supreme Court (Court of Appeal) Rules 2005* rule 3(1); or
 - (f) the document is filed for the purposes of an application under the *Terrorism (Extraordinary Powers) Act 2005* or the *Terrorism (Preventative Detention) Act 2006*; or
 - (g) the document is filed for the purposes of an urgent application made outside office hours; or
 - (h) the document is filed by a person given permission under subrule (3) to file it otherwise than in accordance with this rule; or
 - (i) the document is in a class of documents declared in the Practice Directions to be exempt from the requirement to be filed using the EDS; or
 - (j) the document is filed by a person in a class of persons declared in the Practice Directions to be exempt from the requirement to file using the EDS.
- (2) If under subrule (1) a person cannot present a document electronically using the EDS, the person may present it to the Court —
- (a) subject to rule 4, by emailing it; or

Supreme Court Amendment Rules 2018

r. 40

- (b) subject to rule 5, by delivering it; or
 - (c) subject to rule 6, by posting it; or
 - (d) subject to rule 7, by faxing it.
 - (3) The Principal Registrar, for any good reason and without a formal application or request, may permit a person to present a document otherwise than in accordance with subrule (1).
 - (4) When giving permission under subrule (3), the Principal Registrar may give directions as to the manner in which the document is to be presented, including as to whether the document is to be presented to the Court —
 - (a) by emailing it; or
 - (b) by delivering it; or
 - (c) by posting it; or
 - (d) by faxing it.
- 4. Documents presented for filing using EDS or email**
- (1) This rule applies to documents being presented to the Court for filing using the EDS or email.
 - (2) A person must not email a document to the Court for filing unless —
 - (a) these rules say it cannot be filed electronically; or
 - (b) the Principal Registrar has permitted the person to email it.
 - (3) If under subrule (2) a person can email a document to the Court, the person must ensure —
 - (a) the document is emailed to the email address of the Court specified by the Practice Directions; and

Supreme Court Amendment Rules 2018***r. 40***

- (b) the email by which the document is sent to the Court includes the following —
 - (i) the name of the person sending the document;
 - (ii) the title and number of the proceeding to which the document relates;
 - (iii) a description of the document;
 - (iv) an explanation of the basis on which subrule (2) applies to the document.
- (4) Subrule (5) applies to these documents —
 - (a) an affidavit;
 - (b) a consent to the Court doing anything;
 - (c) a document signed by a person who is not a party to the proceedings.
- (5) A document to which this subrule applies must not be presented for filing using the EDS or email unless it is signed and is presented in a .pdf electronic format.
- (6) Subrule (7) applies to any document that is not listed in subrule (4) and that, under these rules, must be signed before it is filed.
- (7) If a document to which this subrule applies is to be presented for filing —
 - (a) it must be signed before it is presented; and
 - (b) a copy of it, in .docx electronic format, that states the name of the person who is required to sign it instead of showing the person's signature, at any place in it where the signature is required, must be presented instead of the signed copy; and
 - (c) the electronic copy must be presented using the EDS or, subject to subrule (2), email; and

Supreme Court Amendment Rules 2018

r. 40

- (d) the person filing it must retain the signed copy and produce it if required to do so by the Court.
- (8) A person who files a document by email must —
 - (a) indorse the first page of the original document with —
 - (i) a statement that the document is the original of a document sent by email; and
 - (ii) the date and time the document was sent by email;
 - and
 - (b) keep the indorsed original document; and
 - (c) if required to do so by the Court, produce the indorsed original document to the Court.
- (9) Subject to subrules (4) to (7), all documents presented to the Court for filing using the EDS or email must be in an electronic format specified by the Practice Directions.
- (10) A document filed electronically is taken to have been filed on the day and at the time recorded by the EDS.
- (11) A document filed by email is taken to have been filed on the day and at the time when the Court receives the email.
- (12) Subrule (10) does not apply to a document that is recorded in the EDS under rule 8(1) as if it had been filed electronically.
- (13) If —
 - (a) these rules require 2 or more copies of a document to be filed; and

Supreme Court Amendment Rules 2018**r. 40**

(b) the document is filed electronically or by email, the requirement in paragraph (a) is taken to have been complied with.

- (14) A document that is presented for filing using the EDS or email but not in accordance with the requirements of the EDS and this rule is taken not to have been filed.
- (15) The Court may at any time, on the application of a party or on its own initiative, order a person who has presented a document for filing using the EDS or email —
- (a) to have the original paper copy of it with the person at any conference or hearing in the course of the case concerned;
 - (b) to file the original paper copy of it by a means specified in the order.

5. Delivering documents for filing

A person must not deliver a document to the Court for filing unless —

- (a) these rules say it cannot be filed electronically; or
- (b) the Principal Registrar has permitted the person to deliver it.

6. Posting documents for filing

- (1) A person must not post a document to the Court for filing unless —
- (a) these rules say it cannot be filed electronically; or
 - (b) the Principal Registrar has permitted the person to post it.

Supreme Court Amendment Rules 2018

r. 40

- (2) If under subrule (1) a person can post a document to the Court, the person must comply with subrules (3) and (4).
 - (3) A document sent by post to the Court must have a cover page stating the following —
 - (a) the name of the person sending the document;
 - (b) the title and number of the proceeding to which the document relates;
 - (c) a description of the document;
 - (d) an explanation of the basis on which subrule (1) applies to the document.
 - (4) The document must be posted —
 - (a) in an A4 or larger envelope; and
 - (b) to the postal address of the Court specified in the Practice Directions.
- 7. Faxing documents for filing**
- (1) A person must not fax a document to the Court for filing unless the Principal Registrar has permitted the person to fax it.
 - (2) If under subrule (1) a person can fax a document to the Court, the person must comply with subrules (3) to (8).
 - (3) The person must use the fax number of the Court specified in the Practice Directions.
 - (4) A document that, with any attachments and a cover page, has more than 20 pages, must not be filed by fax and any such document received by the Court is to be taken not to have been filed.

Supreme Court Amendment Rules 2018**r. 40**

- (5) A document sent by fax to the Court must have a cover page stating —
 - (a) the name, postal address, document exchange number (if any), telephone number and fax number of the person sending the document; and
 - (b) the number of pages (including the cover page) being sent by fax.
- (6) A person who files a document by fax must —
 - (a) indorse the first page of the original document with —
 - (i) a statement that the document is the original of a document sent by fax; and
 - (ii) the date and time the document was sent by fax;and
 - (b) keep the indorsed original document and the fax machine's report evidencing the successful transmission of the document; and
 - (c) if directed to do so by the Court, produce the items in paragraph (b) to the Court.
- (7) A document filed by fax is to be taken to have been filed on the day and at the time when the Court receives the fax.
- (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has faxed a document to the Court —
 - (a) to have the original paper copy of it with the person at any conference or hearing in the course of the case concerned;
 - (b) to file the original paper copy of it by a means specified in the order.

Supreme Court Amendment Rules 2018

r. 40**8. How filed paper documents are to be dealt with**

- (1) If —
 - (a) a paper copy of a document is filed in accordance with these rules; and
 - (b) an electronic copy of it is not filed,the Principal Registrar may convert the document to an electronic format and record it in the EDS as if it had been filed electronically.
- (2) Subrules (3) to (6) apply to a paper version of a document filed in the Court if the document is recorded in the EDS under subrule (1) as if it had been filed electronically.
- (3) If a document is recorded in the EDS under subrule (1) as if it had been filed electronically, the paper version of the document must be retained by the Court —
 - (a) for 90 days from the day it was filed; and
 - (b) until it is collected or the period referred to in subrule (4) expires, whichever occurs first.
- (4) The person who filed the paper version of the document may collect it from the Court within 30 days after the period referred to in subrule (3)(a) expires.
- (5) If the paper version of the document is not collected within the period referred to in subrule (4), a registrar may cause the document to be destroyed.
- (6) If the paper version of the document is collected within the period referred to in subrule (4), the person who filed it must, unless a registrar approves the destruction of the document —
 - (a) keep the document; and
 - (b) if directed to do so by the Court, produce the document to the Court.

Supreme Court Amendment Rules 2018**r. 40**

Division 3 — Documents containing sensitive information**9. Terms used**

In this Division —

legislation means —

- (a) a written law; or
- (b) legislation of another Australian jurisdiction;

restricted document means a document the existence and the whole of the contents of which must not be known or accessible to anyone other than the person filing it and a judge, master or registrar;

restricted information means information access to which is restricted by —

- (a) legislation; or
- (b) an order made by a court in Australia.

10. Person to advise Court if filing sensitive document

- (1) A person presenting a document to the Court for filing must advise the Court —

- (a) if access to all or a part of the information in the document is restricted because —
 - (i) the information is restricted information; or
 - (ii) the person is applying under Order 67B rule 5 for an order restricting access to the information;

or

- (b) if the document is a restricted document; or
- (c) if the existence and content of the document must not be made accessible or known to the

Supreme Court Amendment Rules 2018

r. 40

judge or master who is or will be trying the case in respect of which the document is filed.

- (2) If a person presents a document to the Court for filing electronically, 2 or more of paragraphs (a), (b) and (c) in subrule (1) cannot apply to the document.
- (3) A person wanting to advise the Court under subrule (1) must —
 - (a) if the person is presenting the document for filing electronically, record the advice on the EDS and —
 - (i) if subrule (1)(a)(i) applies to information in the document, comply with rule 11;
 - (ii) if subrule (1)(a)(ii) applies to information in the document, comply with rule 12;
 - (iii) if subrule (1)(b) applies to the document, comply with rule 13;
 - (iv) if subrule (1)(c) applies to the document, comply with rule 14;
 - (b) otherwise comply with —
 - (i) rule 11 if subrule (1)(a)(i) applies to information in the document;
 - (ii) rule 12 if subrule (1)(a)(ii) applies to information in the document;
 - (iii) rule 13 if subrule (1)(b) applies to the document;
 - (iv) rule 14 if subrule (1)(c) applies to the document.
- (4) A person who has presented a document to the Court for filing may subsequently advise the Court that 1 of paragraphs (a), (b) and (c) in subrule (1) applies to a

Supreme Court Amendment Rules 2018**r. 40**

document by asking the Principal Registrar to act under subrule (6).

- (5) If under this rule the Court has been advised that 1 of paragraphs (a), (b) or (c) in subrule (1) applies to a document, it is to be presumed that the paragraph does apply to it until —
 - (a) its classification is changed or cancelled under subrule (6); or
 - (b) if an order made under Order 67B rule 5(3) applies to it, the order is cancelled.
- (6) If satisfied there is good reason to do so, the Principal Registrar, by amending information on the EDS or by taking other reasonable steps, may —
 - (a) classify a filed document as being a document to which 1 of paragraphs (a), (b) and (c) in subrule (1) applies;
 - (b) if a filed document is already such a document —
 - (i) change its classification; or
 - (ii) cancel its classification as a document to which any of paragraphs (a), (b) and (c) in subrule (1) applies.
- (7) The Principal Registrar must not act under subrule (6) unless the Principal Registrar has given the person who filed the document, and any person served with the document, an opportunity to object to the action.
- (8) Before acting under subrule (6), the Principal Registrar may give the person who filed the document any directions reasonably necessary to enable the Principal Registrar to properly classify the document, including directions that require the person to serve the document on 1 or more other persons.

Supreme Court Amendment Rules 2018

r. 40**11. Documents containing restricted information**

- (1) This rule applies if under rule 10(1) a person advises the Court that a document presented for filing contains restricted information.
- (2) If the document was filed electronically, by email or by fax, the person who filed it must, within 24 hours after filing it, do the following —
 - (a) file a memorandum that does the following —
 - (i) states —

Attention: [*Identify the document*]
contains information to which access is restricted by [*the short title and provision of applicable legislation or the details of the applicable court order*].;
 - (ii) identifies the legislation, or court order, that restricts access to the information;
 - (iii) identifies the restricted information in the document;
 - (iv) identifies the person, or class of persons, who can have access to the information lawfully;
 - (v) identifies the person, or class of persons, whose access to the information is restricted;
 - (vi) states the conditions, if any, that the Court should impose if it were to give access to the information to any such person;
 - (vii) states whether the information will cease to be restricted information and, if so, when it will cease to be restricted information;

Supreme Court Amendment Rules 2018**r. 40**

- (b) if a court order restricts access to the information, file a copy of the order.
- (3) If the document was filed by delivering it, the person who filed it must do the following —
 - (a) ensure the document has a cover sheet that includes this statement —

Attention: This document contains information to which access is restricted by [*the short title and provision of applicable legislation or the details of the applicable court order*].;
 - (b) within 1 day after filing it, file a memorandum that does the following —
 - (i) identifies the legislation, or court order, that restricts access to the information;
 - (ii) identifies the restricted information in the document;
 - (iii) identifies the person, or class of persons, who can have access to the information lawfully;
 - (iv) identifies the person, or class of persons, whose access to the information is restricted;
 - (v) states the conditions, if any, that the Court should impose if it were to give access to the information to any such person;
 - (c) if a court order restricts access to the information in the document, file a copy of the order within 1 day after filing the document.
- (4) If the person who filed the document does not comply with subrule (2) or (3), as the case requires, the Principal Registrar may exercise the powers in rule 10(6).

Supreme Court Amendment Rules 2018

r. 40

- (5) If a judge, master or registrar is not satisfied the document contains restricted information, the judge, master or registrar —
 - (a) must notify the person who filed the document accordingly; and
 - (b) may direct the Principal Registrar to exercise the powers in rule 10(6).

12. Documents containing information to which access should be restricted

- (1) This rule applies if under rule 10(1) a person advises the Court that the person is applying under Order 67B rule 5 for an order restricting access to information in a document presented for filing.
- (2) If the document was filed electronically, the person who filed it must, within 24 hours after filing it, file electronically an application that complies with Order 67B rule 5(2) and that applies for an order made under Order 67B rule 5(3).
- (3) If the document was not filed electronically, the person who filed it must do the following —
 - (a) ensure the document has a cover sheet that includes this statement —

Attention: This document contains information that is the subject of an application for an order made under the *Rules of the Supreme Court 1971* Order 67B rule 5 that restricts access to it.;
 - (b) within 1 day after filing it, file an application that complies with Order 67B rule 5(2) and that applies for an order made under Order 67B rule 5(3).

Supreme Court Amendment Rules 2018**r. 40**

- (4) If the person who filed the document does not comply with subrule (2) or (3), as the case requires, the Principal Registrar may exercise the powers in rule 10(6).

13. Restricted documents

- (1) This rule applies if under rule 10(1) a person advises the Court that a document presented for filing is a restricted document.
- (2) If the document was filed electronically, the person who filed it must, within 24 hours after filing it, do the following —
 - (a) file electronically a memorandum that does the following —
 - (i) states —

Attention: [*Identify the document*] is a document the existence and the whole of the contents of which must not be known or accessible to anyone other than the person filing it and a judge or master.;
 - (ii) explains why the document is a restricted document;
 - (iii) if the document is a restricted document by virtue of legislation, or a court order, identify the legislation or order;
 - (iv) states the conditions, if any, that the Court should impose if it were to give access to the document to anyone other than the person filing it and a judge or master;
 - (v) states whether the document will cease to be a restricted document and, if so,

Supreme Court Amendment Rules 2018

r. 40

when it will cease to be a restricted document;

- (b) if the document is a restricted document by virtue of a court order, file electronically a copy of the order;
 - (c) if the document is not a restricted document by virtue of legislation or a court order — file electronically an application that complies with Order 67B rule 5(2) and that applies for an order made under Order 67B rule 5(3).
- (3) If the document was not filed electronically, the person who filed it must do the following —
 - (a) ensure the document has a cover sheet that includes this statement —

Attention: [*Identify the document*] is a document the existence and the whole of the contents of which must not be known or accessible to anyone other than the person filing it and a judge or master.;
 - (b) within 1 day after filing it, file an application that complies with Order 67B rule 5(2) and that applies for an order made under Order 67B rule 5(3).
- (4) If the person who filed the document does not comply with subrule (2) or (3), as the case requires, the Principal Registrar may exercise the powers in rule 10(6).
- (5) If a judge or master is not satisfied the document is a restricted document, the judge or master —
 - (a) must notify the person who filed the document accordingly; and
 - (b) may direct the Principal Registrar to exercise the powers in rule 10(6).

Supreme Court Amendment Rules 2018**r. 40**

14. Documents that are not to be accessible to judiciary

- (1) This rule applies if under rule 10(1) a person advises the Court that the existence and content of a document presented for filing must not be made accessible or known to the judge or master who is or will be trying the case in respect of which the document is filed.
- (2) If the document was filed electronically, the person who filed it must, within 24 hours after filing it, file electronically a memorandum that does the following —
 - (a) states —

Attention: [*Identify the document*] is a document the existence and content of which must not be made accessible or known to the judge or master who is or will be trying the case in respect of which it is filed.;
 - (b) explains why the document is such a document;
 - (c) states whether the document will cease to be such a document and, if so, when it will cease to be such a document.
- (3) If the document was not filed electronically, the person who filed it must do the following —
 - (a) ensure the document has a cover sheet that includes this statement —

Attention: [*Identify the document*] is a document the existence and content of which must not be made accessible or known to the judge or master who is or will be trying the case in respect of which it is filed.;
 - (b) within 1 day after filing it, file a memorandum that does the following —
 - (i) explains why the document is such a document;

Supreme Court Amendment Rules 2018

r. 40

- (ii) states whether the document will cease to be such a document and, if so, when it will cease to be such a document.
- (4) If the person who filed the document does not comply with subrule (2) or (3), as the case requires, the Principal Registrar may exercise the powers in rule 10(6).

Division 4 — Miscellaneous matters**15. Principal Registrar may delegate**

- (1) The Principal Registrar, in writing, may delegate all or any of the Principal Registrar's functions under this Order to 1 or more other officers of the Court.
- (2) For the purposes of these rules, a decision made by a delegate of the Principal Registrar under this Order is taken to be a decision made by the Principal Registrar.

16. Principal Registrar may refer matters to judge or master

The Principal Registrar may refer a question that arises under this Order in respect of a document to a judge or master.

17. Appeals from decisions made under this Order

- (1) A person who is dissatisfied by a decision made under this Order by the Principal Registrar may ask the Principal Registrar for the decision to be made afresh by a judge or master.
- (2) If the Principal Registrar receives a request made under subrule (1), the Principal Registrar must refer the matter concerned to a judge or master.

Supreme Court Amendment Rules 2018r. 40

Order 67B — Access to information and things held by the Court**Division 1 — Preliminary matters****1. Terms used****(1) In this Order —**

hearing means any hearing, including a trial, held by the Court in a proceeding;

legislation means —

- (a) a written law; or
- (b) legislation of another Australian jurisdiction;

media manager means the person who, on behalf of the Court, manages its relations with media organisations;

media organisation means an organisation the principal purpose of which is to, and which itself does, disseminate news or information directly to the public by means of printed paper, radio, television or the internet;

media representative means a person who is employed by a media organisation;

probate application means an application for a grant, as defined in the *Non-contentious Probate Rules 1967* rule 2;

proceeding means —

- (a) any case, or appeal, in the civil jurisdiction of the General Division; and
- (b) any civil appeal, as defined in the *Supreme Court (Court of Appeal) Rules 2005* rule 3(1); and
- (c) any proceeding on a probate application;

Supreme Court Amendment Rules 2018

r. 40

record means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

transcript means a transcript of an audio or audio-visual recording of a hearing in the Court.

- (2) In this Order, a reference to information or to a record or thing includes a reference to a part of it.

2. Application of this Order

- (1) This Order applies to information, records and other things held by the Court in respect of proceedings, whether or not due to a Court order.
- (2) This Order, other than Division 7, applies —
 - (a) to any person, other than a party to a proceeding, who wants access to information or a record or other thing held by the Court in respect of a proceeding commenced on or after 1 March 2018; and
 - (b) to any party to a proceeding who wants access to information or a record or other thing held by the Court in respect of the proceeding, no matter when it was commenced.

Supreme Court Amendment Rules 2018**r. 40**

- (3) Despite subrules (1) and (2), this Order does not apply to these —
- (a) a record or other thing —
 - (i) that is held by the Court as a result of a subpoena it issued in a proceeding; and
 - (ii) that has not been formally admitted into evidence as an exhibit, or marked for identification, in the proceeding;
 - (b) information, records or other things that the Court has ceased to hold in respect of proceedings;
 - (c) a record that —
 - (i) is created by or sent to the Court in respect of a proceeding for administrative purposes; and
 - (ii) is not a filed document; and
 - (iii) is not part of an index or other record of all cases in the Court.

3. Access to information and things under other legislation

This Order does not affect any entitlement a person has under any other legislation to be given access to information or a record or thing.

4. Order does not limit Court's general power to release information

This Order does not prevent the Court from releasing, on its own initiative, any information, record or other thing to any person, on any terms and conditions and in any manner, it thinks fit.

Supreme Court Amendment Rules 2018

r. 40**Division 2 — Orders restricting access****5. Court's powers to restrict access**

- (1) The Court may make an order under this rule —
 - (a) on its own initiative; or
 - (b) on the application of any person.
- (2) An application for an order made under subrule (3) must do the following —
 - (a) state the grounds for the application;
 - (b) identify the information, record or thing to which the order should apply;
 - (c) state the person, or class of persons, whose access to the information, record or thing should be restricted by the order;
 - (d) state any conditions that should apply if the Court were to give access to the information, record or thing;
 - (e) state the period for which the order should apply.
- (3) The Court may make an order that restricts access to information or a record or other thing if it considers —
 - (a) that the information, record or thing is the subject of a pending claim that it is privileged or confidential; or
 - (b) that the information, record or thing is privileged or confidential; or
 - (c) that in the interests of justice, access to the information, record or thing should be restricted.

Supreme Court Amendment Rules 2018**r. 40**

- (4) An order made under subrule (3) must include the reasons for it and sufficient information to identify clearly —
 - (a) the information, record or thing to which the order applies; and
 - (b) the person, or class of persons, whose access to the information, record or thing is restricted by the order; and
 - (c) any conditions that will apply if access to the information, record or thing were to be given by the Court; and
 - (d) the period during which the order applies.
- (5) The Court may at any time, by order, amend or cancel an order made under subrule (3).
- (6) If an application is made for an order made under subrule (3) in respect of information or a record or other thing, access to the information, record or thing is taken to be unavailable to all but the Court and the applicant until the application is decided.

Division 3 — Entitlements to access**6. Entitlements of every person**

- (1) For the purposes of this rule, a person's access to information or a document is restricted if the person's access to it is restricted by —
 - (a) legislation; or
 - (b) an order made by a court in Australia.

Supreme Court Amendment Rules 2018**r. 40**

- (2) Unless the person's access to the information is restricted, any person is entitled to have access to the information listed in the Table held by the Court.

Table

A. General Division (general jurisdiction) and Court of Appeal information
<ol style="list-style-type: none"> 1. Whether a named person is or is not a party to a proceeding. 2. Whether a named person is or is not a witness in a proceeding. 3. Whether an identified record or thing that relates to a proceeding is or is not held by the Court. 4. In respect of an identified proceeding — <ol style="list-style-type: none"> (a) the name of each party to it; (b) the name of the representative (if any) of each party to it; (c) the date on which it was commenced; (d) the matter reference number assigned to it by the Court; (e) the title of any filed document held in relation to it; (f) the date on which a filed document was filed; (g) the date, time and nature of any hearing in it; (h) the current status of it.
B. General Division (non-contentious probate jurisdiction) information
<ol style="list-style-type: none"> 1. Whether a named person has made a probate application. 2. Whether an identified record or thing that relates to a probate application is or is not held by the Court.

Supreme Court Amendment Rules 2018**r. 40**

- | |
|---|
| <p>3. In respect of an identified probate application —</p> <ul style="list-style-type: none"> (a) the name of the applicant; (b) the name of the representative (if any) of the applicant; (c) the date on which it was made; (d) the matter reference number assigned to it by the Court; (e) the title of any filed document held in relation to it; (f) the date on which a filed document was filed; (g) the date, time and nature of any hearing in it; (h) the current status of it. |
|---|
- (3) Unless the person's access to the document is restricted, any person is entitled to have access to any of the filed documents, listed in the Table, that commenced a proceeding.

Table

A. General Division (general jurisdiction) documents
1. A writ indorsed under Order 6 rule 1 or indorsed with a statement of claim.
2. An originating summons or motion, or other document, that commenced a proceeding under any of these Acts —
(a) the <i>Corporations Act 2001</i> (Commonwealth);
(b) the <i>Family Provision Act 1972</i> ;
(c) the <i>Transfer of Land Act 1893</i> ;
(d) the <i>Trustees Act 1962</i> .
3. An appeal notice.
B. Court of Appeal document
1. An appeal notice.

Supreme Court Amendment Rules 2018**r. 40****C. General Division (non-contentious probate jurisdiction) documents**

1. The originating motion that applies for a grant (as defined in the *Non-contentious Probate Rules 1967* rule 2).

- (4) Unless the person's access to the document is restricted, any person is entitled to have access to —
- (a) any of the documents listed in Part A of the Table held by the Court in respect of a proceeding that was commenced by means of a document listed in Part A of the Table to subrule (3);
 - (b) any of the documents listed in Part B of the Table held by the Court in respect of a proceeding that was commenced by means of a document listed in Part B of the Table to subrule (3);
 - (c) any of the documents listed in Part C of the Table held by the Court in respect of a proceeding that was commenced by means of a document listed in Part C of the Table to subrule (3).

Table**A. General Division (general jurisdiction) documents**

1. A memorandum of appearance.
2. A notice of change of solicitor.
3. A notice of intention to act in person.
4. A notice of ceasing to act.
5. A notice of discontinuance.
6. A list of exhibits.
7. A list of things tendered to the Court in a hearing in the proceeding but not admitted into evidence.
8. A judgment of the Court and the reasons for it.

Supreme Court Amendment Rules 2018**r. 40**

9. An order of the Court.
10. A transcript.
11. A notice of respondent's intention filed under Order 65.
12. A discontinuance notice filed under Order 65.
B. Court of Appeal documents
1. A notice of a respondent's intention.
2. A notice of a respondent's cross appeal.
3. A discontinuance notice.
4. A list of exhibits referred to in the Court of Appeal.
5. A judgment of the Court of Appeal and the reasons for it.
6. An order made by the Court of Appeal.
C. General Division (non-contentious probate jurisdiction) documents
1. The grant (as defined in the <i>Non-contentious Probate Rules 1967</i> rule 2) with, if applicable, the will attached.
2. Any order dismissing the originating motion.

- (5) Despite subrules (2) to (4), a person using the website called the eCourts Portal of Western Australia is entitled to have access to any information or record to which the website, if used lawfully, allows the user to have access.
- (6) Despite subrules (2) to (4), an authorised user of the EDS is entitled to have access to any information or record to which the system, if used lawfully, allows the user to have access.

7. Entitlements of parties

- (1) For the purposes of this rule, a party's access to information or a record or other thing is restricted if the party's access to it is restricted by —
- (a) legislation; or

Supreme Court Amendment Rules 2018

r. 40

- (b) an order made by a court in Australia.
- (2) Unless the party's access to the information, record or thing is restricted, a party to a proceeding is entitled to have access to any of the following held by the Court in respect of the proceeding —
 - (a) a filed document;
 - (b) a list of exhibits;
 - (c) an exhibit;
 - (d) a list of things tendered to the Court in a hearing in the proceeding but not admitted into evidence;
 - (e) any thing on the list referred to in paragraph (d);
 - (f) a transcript.

Division 4 — Access with the Court's permission**8. Access with the Court's permission**

A person who, for any reason, is not entitled to have access to information or a record or other thing under Division 3 may have access to it only —

- (a) with the permission of the Court given under rule 9 on an application made to the Court under rule 11; or
- (b) with the permission of the media manager given under rule 10 on an application made to the media manager under rule 11.

9. When Court can give permission

- (1) This rule applies if an application for permission is made in writing to the Court under rule 11.
- (2) This rule must be read with rule 13.

Supreme Court Amendment Rules 2018***r. 40***

- (3) The Court must give permission if satisfied —
- (a) the application —
 - (i) relates to information or a record or other thing that was considered by the Court in the proceeding to which the application relates; or
 - (ii) relates to the transcript of the whole or a part of a hearing in that proceeding that the applicant was entitled to attend;and
 - (b) the application does not relate to an audio or audio-visual recording of a hearing in that proceeding; and
 - (c) if the application relates to information or a record or other thing that was considered by the Court in that proceeding but was not admitted into evidence or was struck out — that giving permission would not prejudice or adversely affect any person; and
 - (d) that giving permission would not breach —
 - (i) any legislation; or
 - (ii) an order made by a court in Australia;and
 - (e) the arrangements necessary to give the applicant access would not —
 - (i) be unreasonably expensive or time consuming for the Court or a party; or
 - (ii) unduly impede the efficient conduct of the proceeding;and
 - (f) there is no other good reason to refuse the application.

Supreme Court Amendment Rules 2018

r. 40

- (4) If the application does not relate to information or a record or other thing referred to in subrule (3)(a) or to a recording referred to in subrule (3)(b), the Court may give permission if satisfied —
 - (a) as to the matters in subrule (3)(d) to (f); and
 - (b) there is a good reason to do so.
- (5) If under subrule (3)(a)(ii) the Court is not satisfied the applicant was entitled to attend the hearing, the Court may nevertheless give permission if satisfied —
 - (a) as to the other matters in subrule (3); and
 - (b) there is a good reason to do so.
- (6) If the application relates to a recording referred to in subrule (3)(b) then —
 - (a) if the recording has been broadcast on the Court's website, the Court may give permission if satisfied there is no good reason to refuse the application; or
 - (b) if the recording has not been broadcast on the Court's website, the Court may give permission only if satisfied —
 - (i) as to the matters in subrule (3)(d) to (f); and
 - (ii) there is an exceptional reason to do so.

10. When media manager can give permission

- (1) This rule applies if —
 - (a) a media representative makes an oral application for permission under rule 11 to the media manager; or
 - (b) a media representative makes a written application for permission under rule 11 to the

Supreme Court Amendment Rules 2018**r. 40**

Court that the Court refers to the media manager to deal with.

- (2) This rule must be read with rule 13.
- (3) The media manager must give permission if satisfied —
 - (a) the applicant is a media representative; and
 - (b) the Court has already given another media representative permission to have access to the information, record or other thing to which the applicant wants access; and
 - (c) neither the other media representative nor the other media representative's employer is a party to the proceeding in respect of which that information, record or other thing is held by the Court; and
 - (d) neither the applicant nor the applicant's employer is a party to that proceeding.
- (4) If the media manager gives permission under subrule (3), it must be on the same terms and conditions (if any) as those on which the Court gave permission to the other media representative.

Division 5 — Applications for access**11. Applying for access**

- (1) A person using the Court's website —
 - (a) may have access to any information or record to which the website, if used lawfully, allows the user to have access; and
 - (b) need not apply under this rule for access to the information or record.

Supreme Court Amendment Rules 2018

r. 40

- (2) A person who is an authorised user of the EDS —
 - (a) may have access to any information or record related to proceedings to which that system, if used lawfully, allows the person to have access; and
 - (b) need not apply under this rule for access to the information or record.
- (3) A person who, under Division 3 or 4, wants access to information or a record or other thing must apply under this rule.
- (4) The application is taken to be an interlocutory application in the proceeding in respect of which the information, record or other thing is held by the Court, whether or not the applicant is a party to that proceeding.
- (5) Despite subrule (4), Order 4A rule 4A does not apply to the application.
- (6) Despite Order 59 rules 1(1) and 3, the application may be made by letter to the Principal Registrar.
- (7) If an application is made under subrule (6), the Principal Registrar may require the applicant to file a motion or summons in accordance with Order 59 rule 3(1)(b).
- (8) A person may apply orally to the Court for access to information or a record or thing if —
 - (a) the person is entitled under Division 3 to have access to the information, record or other thing; and
 - (b) no fee is payable in respect of the application.

Supreme Court Amendment Rules 2018***r. 40***

- (9) A media representative may apply orally to the media manager for access to information if the media representative —
 - (a) is entitled under rule 6 to have access to the information; and
 - (b) gives the media manager the case number of the proceeding in respect of which the information is held by the Court.
- (10) Every written application must be accompanied by the prescribed fee (if any).
- (11) Every application must —
 - (a) describe clearly —
 - (i) the information, record or other thing to which access is wanted; and
 - (ii) the proceeding in respect of which the information, record or other thing is held by the Court;and
 - (b) if the applicant is a media representative, must state —
 - (i) that fact; and
 - (ii) whether the applicant or the applicant's employer is a party to the proceeding in respect of which the information, record or other thing is held by the Court;and
 - (c) if it is for access to information or a record, state the format (such as paper or digital) in which the applicant, if allowed access, would prefer to be given the information or record.
- (12) Every application for permission to have access must state the reasons why access is wanted.

Supreme Court Amendment Rules 2018

r. 40

- (13) The applicant need not serve the application on, or give notice of it to, any person unless the Court orders otherwise under rule 12.

12. Court's powers as to applications for permission

- (1) This rule applies if a written application is made to the Court under rule 11 for permission to have access.
- (2) The Court —
 - (a) may order the applicant to provide additional information in the form of an affidavit;
 - (b) may order the applicant to serve on a person specified in the order —
 - (i) the application; and
 - (ii) a notice giving the person an opportunity to give the Court submissions about the application;
 - (c) may request any person to give it submissions about the application;
 - (d) may decide the application on the basis of the documents filed without requiring the applicant to attend a hearing.
- (3) The Court is not required to determine an application until after the applicant complies with an order made under subrule (2).

13. How applications are determined

- (1) This rule applies to every application made under rule 11.
- (2) The Court or the media manager, as the case may be, may grant the application —
 - (a) in whole or in part; and
 - (b) with or without conditions.

Supreme Court Amendment Rules 2018**r. 40**

- (3) If the Court or the media manager, as the case may be, is satisfied the applicant is entitled under Division 3 to have the access wanted, the Court or media manager must grant the application.
- (4) If the Court is satisfied the applicant needs permission to have the access wanted, it must determine the application in accordance with rule 9.
- (5) If the media manager is satisfied the applicant needs permission to have the access wanted, the media manager must determine the application in accordance with rule 10.
- (6) If the media manager refuses a written application —
 - (a) the media manager may refer it to the Court to determine afresh; and
 - (b) the refusal does not affect the applicant's right to apply to the Court for access.

Division 6 — How access is given**14. How and when the Court gives access**

- (1) For the purposes of this rule, an applicant is allowed access to information or a record or other thing if, on an application made under Division 5 —
 - (a) it is determined the applicant is entitled to have access to the information, record or other thing; or
 - (b) the applicant is given permission to have access to the information, record or other thing.
- (2) If an applicant is allowed access to information, the Court may give the applicant the information either orally or in writing.

Supreme Court Amendment Rules 2018

r. 40

- (3) If an applicant is allowed access to a record, the Court must give the applicant —
 - (a) a reasonable opportunity to view or listen to it or both and, if necessary, the means by which to do so; and
 - (b) a copy of it in, if practicable, the format preferred by the applicant.
- (4) If an applicant is allowed access to a thing that is not a record, the Court must give the applicant a reasonable opportunity —
 - (a) to inspect it; and
 - (b) to record an image of it.
- (5) Any physical access given under this rule must be given during office hours at the Central Office.
- (6) This rule does not prevent the Court from giving access to information or a record by electronic means.

Division 7 — Access by non-parties to documents in cases commenced before 1 March 2018**15. Application of this Division**

This Division applies to a person, other than a party to a proceeding, who wants access to information or a record or other thing held by the Court in respect of a proceeding commenced before 1 March 2018.

16. Documents that can be inspected or copied

- (1) Any person referred to in rule 15 is, on payment of the prescribed fee, entitled during office hours to inspect and be given a copy of any of these filed documents —
 - (a) any writ, and the statement of claim (if any) indorsed on the writ under Order 6 rule 3;

Supreme Court Amendment Rules 2018**r. 41**

- (b) any originating application made under the *Corporations Act 2001* (Commonwealth);
 - (c) any appeal notice filed under the *Supreme Court (Court of Appeal) Rules 2005*;
 - (d) any judgment or order given or made in court;
 - (e) with the leave of the Court or a registrar, any other document.
- (2) An application for leave made under subrule (1)(e) need not be served on any person.
 - (3) This rule does not entitle a person to search, inspect or take a copy of any part of a document that contains information that the person is prevented by an Act from possessing.

Division 8 — Miscellaneous matters**17. Registrars' decisions may be dealt with by judge or master**

- (1) In this rule —
access application means an application made under rule 11.
- (2) A person dissatisfied by a decision made under this Order by a registrar on an access application may ask the registrar for the access application to be dealt with in a new hearing by a judge or master.
- (3) If a registrar receives a request made under subrule (1), the registrar must refer the matter concerned to a judge or master.

41. Order 69 amended

- (1) In Order 69 rule 1(2) delete “facsimile”.

Supreme Court Amendment Rules 2018

r. 41

- (2) In Order 69 rule 1(3) delete “facsimile” and insert:

copy

- (3) Before Order 69 rule 2(1) insert:

- (1A) For the purposes of documents filed electronically, this rule applies with any necessary changes.

- (4) Delete Order 69 rule 2(3).

- (5) Delete Order 69 rule 2(5) and insert:

- (5) The Court may require —

- (a) any document required for use in the Court to be printed or otherwise produced in any particular manner that it thinks fit; or
- (b) 1 or more paper versions of any document that has been filed electronically to be delivered to the Central Office.

- (6) Delete Order 69 rule 3.

- (7) In Order 69 rule 5(2) delete “original or of an office copy, as the case may be.” and insert:

original.

Supreme Court Amendment Rules 2018**r. 42**

42. Order 71A amended

- (1) In Order 71A rule 3(2):
 - (a) in paragraph (d) delete “practitioner; and” and insert:

practitioner.
 - (b) delete paragraph (e).
- (2) In Order 71A rule 3(5) and (6):
 - (a) delete “registered by the Court’s website as a person authorised to file documents electronically,” and insert:

an authorised user of the EDS,
 - (b) delete “ the website.” and insert:

the EDS.
- (3) In Order 71A rule 5(2)(a) delete “in the Central Office”.

43. Order 72 amended

- (1) In Order 72 rule 2(b) delete “an office” and insert:

a true
- (2) In Order 72 rule 6(1):
 - (a) in paragraph (b) delete “registered by the Court’s website as a person authorised to file documents electronically —” and insert:

an authorised user of the EDS —

Supreme Court Amendment Rules 2018

r. 44

(b) in paragraph (b)(ii) delete “website” and insert:

EDS

(3) In Order 72 rule 6A:

(a) delete “Order 67 rule 20(3) and (4),” and insert:

Order 67A rule 4(4) to (7),

(b) delete “electronically.” and insert:

by email.

44. Order 73 amended

(1) Delete Order 73 rule 2(1) and insert:

(1) A probate action must be begun by writ.

(2) In Order 73 rule 2(2) delete “lodged in the Court.” and insert:

filed.

(3) In Order 73 rule 7:

(a) after “An” insert:

entry of

Supreme Court Amendment Rules 2018**r. 45**

- (b) delete “entered in the Central Office” and insert:

filed

- (4) After Order 73 rule 8 insert:

8A. Applications to include draft citation

An application under rule 5 or 8 must include a draft citation.

- (5) In Order 73 rule 9(1) delete “be issued out of the Central Office but shall”.
- (6) In Order 73 rule 12(1) delete “facsimile”.
- (7) In Order 73 rule 20(3) delete “in the Registry”.

45. Order 75 amended

After Order 75 rule 9 insert:

10. Certain documents cannot be filed

A document that is required to be lodged under rule 3(1) or 8(1) cannot be filed, whether electronically or otherwise.

46. Order 75A amended

- (1) In Order 75A rule 2(2) delete “in the Central Office”.

Supreme Court Amendment Rules 2018

r. 47

(2) After Order 75A rule 2(2) insert:

(2A) The application cannot be filed electronically.

47. Order 80A amended

Delete Order 80A rule 2(3).

48. Order 81F amended

After Order 81F rule 2(3) insert:

(3A) An application that initiates proceedings in the Court cannot be filed electronically.

49. Order 81G amended

After Order 81G rule 8 insert:

9. Documents cannot be filed electronically

A claim, affidavit or other document to be filed under this Order cannot be filed electronically.

50. Order 81H amended

(1) In Order 81H rule 6(1) delete “Chief Justice” and insert:

Court

Supreme Court Amendment Rules 2018**r. 51**

- (2) After Order 81H rule 6 insert:

7. Documents cannot be filed electronically

An originating summons, affidavit or other document to be filed under this Order cannot be filed electronically.

51. Schedule 2 amended

- (1) In Schedule 2 Form 23:

- (a) in paragraph 13 delete “lodge with the Court” and insert:

file

- (b) in paragraph 16 delete “lodging” and insert:

filing

- (2) In Schedule 2 Form 23A:

- (a) in paragraph 14 delete “lodge with the Court” and insert:

file

- (b) in paragraph 17 delete “lodging” and insert:

filing

- (3) In Schedule 2 Form 23B:

- (a) in paragraph 14 delete “lodge with the court” and insert:

file

Supreme Court Amendment Rules 2018

r. 51

- (b) in paragraph 17 delete “lodging” and insert:

filing

- (4) In Schedule 2 Form 25 delete “filed in the Central Office of the Supreme Court, and that office” and insert:

filed, and that

- (5) In Schedule 2 Form 83 under the heading “**Appeal details**” in the item relating to Notice to the respondent delete “lodge” and insert:

file

- (6) In Schedule 2 Form 84 in the item relating to Certificate:

- (a) delete “lodged” and insert:

filed

- (b) delete “lodge” and insert:

file

- (7) In Schedule 2 Form 93B delete “lodged at the Central office of the Supreme Court at Perth” and insert:

filed

Supreme Court Amendment Rules 2018**r. 52**

52. Schedule 3 amended**(1) In Schedule 3 clause 4:****(a) delete “an office” and insert:**

a

(b) delete “the office” and insert:

the

(2) In Schedule 3 clause 7 delete “an office” and insert:

a

(3) In Schedule 3 clause 8 delete “An office” and insert:

A

(4) In Schedule 3 clause 16 delete “an office” and insert:

a

The Hon. CHIEF JUSTICE WAYNE MARTIN AC
Chief Justice of Western Australia
Supreme Court of Western Australia.

Date 21 February 2018.
