



Government Gazette

OF

WESTERN AUSTRALIA

(Published by Authority at 3.30 p.m.)

(REGISTERED AT THE GENERAL POST OFFICE, PERTH, FOR TRANSMISSION BY POST AS A NEWSPAPER)

No. 85]

PERTH: THURSDAY, 18th OCTOBER

[1962

Crown Law Department,
Perth, 12th October, 1962.

THE following amendments to the Rules of the Supreme Court, 1909, are published for general information.

R. C. GREEN,
Under Secretary for Law.

SUPREME COURT ACT, 1935-1960.

Amendment of the Rules of the Supreme Court, 1909.

WE, the Honourable Sir Albert Asher Wolff, Chief Justice, the Honourable Lawrence Walter Jackson, Senior Puisne Judge, and the Honourable John Evenden Virtue, the Honourable Roy Vivian Nevile, the Honourable Gordon Bede D'Arcy, the Honourable John Hale and the Honourable Oscar Joseph Negus, Puisne Judges of the Supreme Court of Western Australia, acting in pursuance of the powers conferred by the Supreme Court Act, 1935-1960, and of every other power enabling us in this behalf, do amend the Rules of the Supreme Court, 1909, in the manner hereinafter mentioned and declare that such amendments shall come into operation forthwith upon publication thereof in the *Government Gazette*.

1.—ORDER XXVI.

Order XXVI, Rule 2, is rescinded.

2.—ORDER XXXIV.

Order XXXIV is amended:—

- (1) by deleting from Rule 10 the passage— “or if there are no pleadings at any time after the expiration of ten days from the filing of the statement of defence;” in lines five, six and seven;
- (2) by rescinding Rules 11 and 12 and substituting the following Rules:—

11. The following rules shall govern the entry for and notice of trial:—

- (a) A party entitled and desiring to make an entry for trial shall make the entry at the Central Office not less than ten days prior to the commencement of the sittings in the month in which it is desired that the trial shall be commenced and shall on the day of entry give notice in writing to every party on the record who has filed and served a statement of defence or a notice of intention to contest damages.
- (b) The plaintiff or person in the position of plaintiff shall have the first option of entering and giving notice of entry for trial but if after the expiration of twenty-one days from the date when such plaintiff first becomes entitled to make the entry and give the notice he neglects to do so any party on the record who is entitled to be heard generally or on any issue or question shall be entitled to make the entry, and give the notice of trial if it has not already been done by any other party similarly entitled: Provided that if no entry is made or notice given within six weeks after the time when such plaintiff shall have first become entitled to do so any defendant may apply to the Court or a Judge 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 that defendant and the Court or Judge may make such order as it or he thinks just either dismissing the claim or striking out

the issue or permitting it to go to trial with or without the imposition of terms.

- (c) The entry for trial and the notice of trial shall state whether it is for the trial of the cause or matter or of a question or issue therein and shall name the place where the trial is to be had. The entry and notice may be in Form No. 16 in Appendix B with such variations as the circumstances may require:

Provided that notwithstanding anything in the foregoing paragraphs (a), (b) and (c) where in the opinion of a Judge there is some doubt or difficulty regarding the entry for and notice of trial the Judge may make an order or give such directions as he thinks fit in the circumstances.

12. Entry for or notice of trial may be countermanded at any time before a date has been fixed for trial by consent of the parties or by leave of the Court or a Judge, on terms as to costs or otherwise as may appear just.

- (3) by inserting after Rule 13 the following Rule:—

13A. (1) A date for hearing shall not be fixed unless the solicitor or party applying furnishes the Associate with a certificate signed by the solicitor or party that an entry for trial has been made in accordance with the Rules.

(2) A record shall be kept by the Associate to the Judge concerned of every case where a date for trial is fixed but not availed of by reason of adjournment obtained at the instance of a party or parties. Forthwith, when any date fixed for a trial is not availed of, the Associate to the Judge concerned shall notify the Associate to the Chief Justice and the Registrar giving the reasons why the date was not availed of.

- (4) by rescinding Rules 14 and 15 and substituting the following Rules:—

14. (1) Subject to Order LXIII Rule 1, the hearing of civil actions and matters entered for trial in the monthly list shall commence on the first Tuesday of the month in which sittings are held.

(2) Unless the Chief Justice otherwise directs, undefended suits in divorce will be taken during the first week of the sittings and specific dates for these will be fixed by the Registrar, and no application is required in these cases.

(3) Applications for dates for hearing of causes, matters or issues other than undefended suits in divorce shall be made in the month preceding that in which a date of trial is sought to the Associate of the Judge sitting in Chambers, or to such other officer as the Chief Justice may designate. Such applications shall be made not earlier than the first Tuesday of the month preceding the month in which the trial is sought and not later than the Wednesday before the first Tuesday of that month. Notice of application shall be given to the other parties concerned who shall be entitled to be heard thereon.

15. (1) The list of fixtures shall be posted in the Central Office and at the Chambers of the respective Judge or at such other place as the Chief Justice may designate, as soon as practicable before the commencement of the sittings.

(2) It shall be the obligation of the solicitor for each party or of any party acting in person to ascertain the days so appointed for hearing.

(3) It shall be the duty of the solicitor making application (or the party where the party is acting in person) to indicate to the Associate or officer making up the list of fixtures for hearing the estimated length of time for hearing, the number of witnesses likely to be called, and also any difficulties arising from distance of travel, sickness or other causes affecting prompt hearing.

(5) by inserting after Rule 15 the following Rule:—

15A. (1) In each sitting month and seven days after the completion of the lists for the several Judges sitting in civil jurisdiction the Associate concerned with the fixing of the lists shall, in collaboration with an officer designated for that purpose by the Registrar, furnish the Chief Justice with a list of all those causes, matters or issues which have been set down for trial but in respect of which either no application was made for the fixing of a date or no date or suitable date was available on application, together with the estimated duration of the trial, the date when the writ or originating proceeding was issued, when it was set down for trial, and the names of the solicitors on the record or, where a party appears in person, the name of that party and his address for service.

(2) In each sitting month, unless the Chief Justice shall otherwise direct, there shall be a callover of all causes, matters or issues set down for trial but which have not been allotted dates.

(3) Three days' notice at least shall be given of the callover by the Registrar.

(4) Such callover may be had before a Judge or, if the Chief Justice so directs, before the Master.

(5) Proceedings at the callover shall be recorded and it shall be the duty of the Judge or Master holding the callover to endeavour to meet the reasonable convenience of parties and get dates for trial of as many as practicable of the causes, matters or issues set down but without dates. The reason given for their non-inclusion in the Associate's list for the month or for the non-inclusion of any after callover shall be recorded.

(6) In any case where the Judge or Master presiding is of opinion that the case is not proceeding to trial with sufficient expedition, or that for any other reason it should not remain in the list, the Judge or Master may direct that the cause, matter or issue be struck out of the list, in which case it shall not be re-entered except on the payment of a further entry fee.

(7) The records of the several proceedings shall be transmitted to the files relating thereto.

(8) The costs of a party attending a callover shall be reserved.

(6) by rescinding Rule 21, and

(7) by rescinding Rules 22 and 23 and substituting the following Rules:—

22. (1) Once a date for trial has been fixed no withdrawal from the list or adjournment shall be made except by summons or motion.

(2) Without affecting the provisions of the preceding sub-rule, it shall be the duty of the solicitor for the party having the carriage of the action of that party (where the party appears in person) immediately to notify the Associate to the Judge concerned if a settlement has been reached or the date of trial cannot be availed of or becomes unsuitable.

23. (1) The party making an entry for trial shall deliver to the proper officer two copies in book form of the whole of the pleadings and of orders and requests for particulars and of particulars supplied pursuant to orders or requests. One of such copies shall be for the use of the Judge at the trial.

(2) Where the pleadings are amended after entry for trial but before trial then, subject to any order of the Court or a Judge, 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 two 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 two further copies of the whole of the pleadings as amended.

(4) Where further copies of the pleadings are required to be filed, all amendments shall be distinctly shown in red and suitable marginal notations shall be made so as to clearly indicate the date and origin of each amendment, and such further books of pleadings shall also include copies of the further documents referred to in sub-rule (1) of this Rule.

(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.

3.—ORDER XXXXVI.

Order XXVI is amended—

- (1) by deleting from Rule 7 the passage "Every affidavit shall be written or printed bookwise"; in lines four and five; and
- (2) by inserting after Rule 8 the following Rule:—

8A. Every affidavit shall be signed on each page by the deponent and by the person before whom the affidavit is sworn.

4.—ORDER LXVI.

Order LXVI is rescinded and the following Order is substituted:—

ORDER LXVI.

(0.66)

Notices, Printing, Paper, Copies etc.

1. In this Order, unless the contrary intention appears, "print" and derivatives of that word include any form of reproduction which complies with the next succeeding rule.

2. Where by any provision of these Rules, a document is required or allowed to be printed, that document may be either printed or reproduced, subject to the provisions of Rule 4 of this Order, by roneograph or some other multigraphing process which gives uniform facsimile pages of clear, sharp and legible type.

3. A notice or consent required or allowed by these Rules shall be typewritten or printed unless expressly authorised by the Court or a Judge to be given orally.

(4) (1) Subject to the preceding Rules of this Order a writ, summons, petition, notice, consent, pleading, affidavit, certificate, judgment, order, account, bill of costs, copy, paper or other document required or allowed by these Rules, or delivered to a party or person, or filed or left in any of the several offices of the Supreme Court or at Chambers or with an officer of the Court, or otherwise, for use in or in connection with a proceeding, shall, unless the nature of the document renders it in any respect impracticable—

- (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 one quarter of an inch between each line;
- (c) be upon white folio foolscap paper of good and durable quality and capable of receiving ink writing;
- (d) be upon one side only of the paper with a quarter margin upon the left hand side of each sheet;
- (e) be folded lengthwise;
- (f) have each page numbered;
- (g) have a backsheet upon which appears the number and short title of the proceedings, a short description of the document (including, in the case of an affidavit, the name of the deponent and the date of swearing) and the name, address and telephone number of the solicitor (if any) filing, delivering or serving the document or, if the person on whose behalf the document is filed, delivered or served is not represented by a solicitor, the name, address for service and telephone number (if any) of that person.

(2) The Registrar may refuse to file or accept a document to which the last preceding sub-rule applies if it does not comply with the provisions of that sub-rule, and the costs of the document may be disallowed upon taxation.

(3) A typewritten copy of a document to which sub-rule (1) of this Rule applies shall not be filed, registered or marked as an office copy unless it is a first black ink copy.

5. Where five or more copies of a document which contains more than ten folios are required for use in any proceeding in the Court, and the copies have not been printed, the Taxing Officer may disallow the whole or a part of any sum by which the cost of the copies exceeds the sum for which they could have been printed.

6. Where a written deposition of a witness has been filed, the deposition shall be printed or typewritten unless otherwise ordered.

7. (1) Where a copy or copies of a document to which Rule 4 of this Order applies is or are required by a party, the party on whose behalf the document has been delivered, filed, left or used shall furnish to the party requiring the copy or copies any number of printed or typewritten copies, not exceeding ten, upon payment at the rate of one shilling a folio for each copy.

(2) As between a solicitor delivering the printed or typewritten copies and his client, credit shall be given by the solicitor for the whole amount payable by the other party for those copies.

(3) The party requiring a copy or copies of a document under this Rule, or his solicitor, shall make a written application to the party by whom the copy or copies is or are to be furnished, or to his solicitor, with an undertaking to pay the proper charges, and thereupon the copy or copies shall be made and be ready to be delivered, as soon as reasonably practicable, upon payment of the proper charges.

(4) If the copy or copies is or are not delivered within seventy-two hours of the application, the party requiring it or them may apply to the Court or a Judge, and the Court or Judge may make such order as may be proper.

(5) The name and address of the party or solicitor by whom a copy is furnished shall be endorsed on the copy in like manner as upon a document in proceedings in the Court, and the party or solicitor shall be answerable for the copy being a true copy of the original or of an office copy of the original, of which it purports to be a copy, as the case may be.

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 in the manner provided by the last preceding rule.

(2) The party who made the application shall furnish the copies upon payment of the proper charges immediately upon the receipt of the written request and undertaking mentioned in the last preceding rule, or within such time as may be specified in the request or may be directed by the Court or a Judge.

5.—APPENDIX B.

Appendix B is amended by deleting Form No. 16 and substituting the following Form:—

No. 16.

ENTRY FOR TRIAL AND NOTICE OF TRIAL.
(Heading as in Form No. 1.)

Enter this action or matter (or the following questions)or the following issues
 ordered to be tried.....for
 trial on a date to be fixed for the.....sittings
 of this Honourable Court to be held at.....
 before a Judge (or before a Judge and Jury).

The probable duration of the trial will be:

.....

State any difficulties (arising from distance of travel, sickness, or other cause) which might affect the prompt hearing of the action:

.....
.....

Dated the.....day of.....19.....

Plaintiff's Solicitor.
(or as the case may be)

(Form of Notice to be endorsed on all copies to be served.)

TAKE NOTICE that I have this day entered the within cause (or matter, or questions, or issues) for trial in accordance with the within entry.

Dated this.....day of.....19.....

Plaintiff's Solicitor
(or as the case may be)

6.—APPENDIX N.

Appendix N is amended by inserting after Item 14B the following item:—

	Lower Scale. (£1-£1,500) Guineas.	Higher Scale. (Over £1,500) Guineas.
14C. Fee on callover—not exceeding	4	4

(Note.—In fixing the quantum of the fee the Judge or Taxing Officer shall take into consideration any delay attributable to the settling of a date which may be the fault of one or other of the parties, and also any other case in respect of which the practitioner attended the callover, in which event the fee allowed shall not be the maximum unless there are special circumstances which in the opinion of the Judge or Taxing Officer warrant the maximum.)

Dated this 11th day of October, 1962.

- A. A. WOLFF,
Chief Justice.
- L. W. JACKSON,
Senior Puisne Judge.
- J. E. VIRTUE,
Puisne Judge.
- R. V. NEVILE,
Puisne Judge.
- G. B. D'ARCY,
Puisne Judge.
- JOHN HALE,
Puisne Judge.
- OSCAR J. NEGUS,
Puisne Judge.

TRAFFIC ACT, 1919 (AS AMENDED).

Office of The Commissioner of Police,
Perth, 18th October, 1962.

HIS Excellency the Governor in Executive Council, acting pursuant to the powers conferred by the Traffic Act, 1919 (as amended), has been pleased to make the regulations set out in the Schedule hereunder.

J. M. O'BRIEN,
Commissioner of Police.

Schedule.

Regulations.

Principal
Regs.

1. In these regulations the Traffic Regulations, 1954, published in the *Government Gazette* on the 15th December, 1954, as amended by the regulations amending the same published in the *Gazette* on the 9th February, 1955; 1st April, 1955; 11th May, 1955; 17th June, 1955; 9th August, 1955; 30th September, 1955; 30th December, 1955; 24th April, 1956; 23rd October, 1956; 16th November, 1956; 23rd November, 1956; 21st December, 1956; 22nd February, 1957; 8th March, 1957; 1st April, 1957; 26th April, 1957; 17th May, 1957; 1st July, 1957; 30th August, 1957; 25th September, 1957; 5th November, 1957; 20th December, 1957; 23rd December, 1957; 24th January, 1958; 19th February, 1958; 17th April, 1958; 29th April, 1958; 13th May, 1958; 5th June, 1958; 25th June, 1958; 15th July, 1958; 18th July, 1958; 1st August, 1958; 12th September, 1958; 10th October, 1958; 24th November, 1958; 3rd March, 1959; 9th April, 1959; 15th May, 1959; 26th May, 1959; 12th June, 1959; 23rd June, 1959; 30th June, 1959; 30th September, 1959; 16th October, 1959; 29th October, 1959; 30th October, 1959; 21st December, 1959; 28th January, 1960; 12th February, 1960; 29th February, 1960; 1st April, 1960; 21st April, 1960; 20th May, 1960; 26th May, 1960; 31st May, 1960; 21st June, 1960; 15th July, 1960; 1st August, 1960; 28th September, 1960; 25th November, 1960; 8th December, 1960; 27th January, 1961; 31st January, 1961; 2nd March, 1961; 24th May, 1961; 29th June, 1961; 1st August, 1961; 20th September, 1961; 1st November, 1961; 12th December, 1961; 18th April, 1962; 21st June, 1962; and 1st August, 1962 are referred to as the principal regulations.

Reg. 24
amended.

2. Regulation 24 of the principal regulations is amended—

(a) by substituting for paragraph (b) of subregulation (1) the following paragraph—

(b) Upon the issue of a set of identification tablets or number plates, the Licensing Authority shall make a charge, not exceeding, in the case of motor vehicles, of ten shillings and, in the case of carts and carriages, of two shillings and sixpence; and

(b) by adding after paragraph (b) of subregulation (1) the following paragraph—

(ba) Notwithstanding the charge provided by paragraph (b) of this subregulation, every identification tablet and number plate remains the property of the Local Authority and shall be returned thereto by the person being the owner, or other person in possession, of the vehicle in respect of which it is issued, forthwith upon the cancellation, suspension or expiration of the vehicle license or upon the disqualification from holding the license in respect of which the identification tablet or number plate was issued.

Reg. 240
amended.

3. Regulation 240 of the principal regulations is amended by adding after subregulation (7) the following subregulation—

(8) A person shall not drive a vehicle at a speed exceeding 35 miles per hour upon the following portions of the South Western Highway, namely—

- (a) the portion extending generally southerly from the southern boundary of Armadale Townsite (the southern boundary of the metropolitan Area, as defined in the First Schedule to these regulations) to a line extending east from the easternmost north-eastern corner of parts of lots 1 and 197 of Canning location 31 as shown on Land Titles Office Diagram 15384; and
- (b) the portion extending generally southerly from the prolongation easterly of the northern boundary of Wungong Town Lot 74 (reserve 17372) to the prolongation easterly of the southern boundary of Byford Townsite.