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SUPREME COURT ACT 1935

SUPREME COURT AMENDMENT RULES 2007

Supreme Court Act 1935

Supreme Court Amendment Rules 2007

Made by the Judges of the Supreme Court.

1. Citation

These rules are the *Supreme Court Amendment Rules 2007*.

2. Commencement

These rules come into operation on 1 March 2007.

3. The rules amended

The amendments in these rules are to the *Rules of the Supreme Court 1971**.

[* *Reprint 6 as at 15 October 2004.*
For amendments to 9 February 2007 see Western Australian Legislation Information Tables for 2005, Table 4.]

4. Terms used in these rules

In these rules, unless the contrary intention appears —

"Form", if followed by a number, means the form of that number in the Second Schedule to the *Rules of the Supreme Court 1971*.

5. Order 1 amended

(1) Order 1 rule 2(1) is amended by deleting ", and on and from that date the Rules set out in the First Schedule shall be revoked".

(2) Order 1 rule 3(2) is amended in the Table to the subrule by deleting item 3.

(3) Order 1 rule 3(2) is amended in the Table to the subrule by deleting item 5.

(4) Order 1 rule 3(3)(b) is deleted.

(5) Order 1 rule 4(1) is amended as follows:

(a) by deleting the definition of "Accountant" and inserting instead —

"

"Accountant" means the chief finance officer, designated under the *Financial Management Act 2006* section 57, of the department of the

Public Service principally assisting in the administration of the Act;

”;

(b) by inserting in the appropriate alphabetical positions the following definitions —

“

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

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

”.

(6) Order 1 rule 7 is repealed.

6. Order 6 amended

Order 6 rules 7 to 11 are repealed and the following rule is inserted instead —

“

7. Writ etc. to state contact details

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

(a) the geographical address; and

(b) the service details,

of each person commencing the proceedings.

”.

7. Order 8 amended

(1) Order 8 rule 5 is amended by deleting “except that the notice of intention to act in person must contain an address for service of the party giving it”.

(2) After Order 8 rule 5 the following rule is inserted —

“

5A. Notices to state party’s contact details

A notice filed under rule 2, 3, 4 or 5 by or in respect of a party must, in accordance with Order 71A, state —

(a) the party’s geographical address; and

(b) the party’s service details.

”.

(3) Order 8 rules 9 and 10 are repealed and the following rule is inserted instead —

“

9. Service details of party whose solicitor is removed

If —

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

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

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

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

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

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

".

8. Order 12 and Second Schedule amended

(1) Order 12 rule 2(3), (4) and (5) are repealed and the following subrule is inserted instead —

"

(3) A memorandum of appearance must, in accordance with Order 71A, state —

(a) the defendant's geographical address; and

(b) the defendant's service details.

".

(2) The Second Schedule Form 6 is deleted and the following form is inserted instead —

"

6. Memorandum of appearance (O. 12 r. 2(2))

Supreme Court of Western Australia General Division	No:	
	Memorandum of appearance	
Parties	Plaintiff Defendant	
Appearance [*delete one]	Enter an appearance for the defendant [*name of party*]. The defendant *is/is not represented by a solicitor.	
Defendant's details		
Defendant's geographical address[1]		
Defendant's service details[1]		
Signature and date		
Signature of defendant or solicitor	Defendant/Defendant's solicitor	Date:

Notes to Form No. 6 —

1. Must be in accordance with Order 71A.

".

9. Order 17 and Second Schedule amended

(1) Order 17 rule 1 is amended as follows:

(a) by deleting "; or" after paragraph (a) and inserting instead a full stop;

(b) by deleting paragraph (b).

(2) Order 17 rule 2(4) is repealed.

(3) Order 17 rule 6 is amended by deleting ", or if the applicant is the sheriff,".

(4) Order 17 rules 12, 13 and 14 are repealed.

(5) Forms 8 and 9 are deleted.

10. Order 24A amended

(1) Order 24A rule 10(4) is amended as follows:

(a) by deleting "taxed on an indemnity basis";

(b) by inserting after "that date," —

" all such costs to be ".

(2) After Order 24A rule 10(4) the following paragraph is inserted —

"

(4a) Paragraph (4) as it was before 1 March 2007 does not apply to an offer made by a plaintiff before 1 March 2007 unless the plaintiff obtains judgment on the claim to which the offer relates before 1 March 2007.

".

11. Order 26 amended

(1) Order 26 rule 8(4) is amended by deleting "an office not more than 3 kilometres from the Court at Perth," and inserting instead —

" a place that is reasonable for the purpose ".

(2) Order 26 rule 15(3) is amended by deleting "for the attachment of the party disobeying" and inserting instead —

" to enforce ".

12. Order 27 amended

Order 27 rule 8(3) is amended by deleting "for the attachment of the party disobeying" and inserting instead —

" to enforce ".

13. Order 29 amended

Order 29 rule 1 is amended as follows:

(a) in the definition of "Mediation Registrar" by deleting "Rule 2(r)(i)" and inserting instead —

" rule 2(1)(r)(i) ";

(b) in the definition of "mediator" by deleting "Rule 2(r)(ii)" and inserting instead —

" rule 2(1)(r)(ii) ".

14. Order 29A amended

After Order 29A rule 15 the following Part is inserted in Order 29A —

"

Part 4 — Inactive Cases List

16. Interpretation

In this Part —

"Inactive Cases List" means a list of inactive cases kept by the Principal Registrar under rule 19(1).

17. Registrar may issue summons to show cause

(1) A Case Management Registrar may at any time summons all parties to a case to attend a hearing before such a Registrar to show cause why the case should not be put on the Inactive Cases List.

(2) The hearing date for the summons must be at least 7 days after the date on which it is issued.

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

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

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

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

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

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

19. Parties to be notified of case being on Inactive Cases List and to advise clients

(1) When an order is made under rule 17, or an order made under rule 18 takes effect, the Principal Registrar must —

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

(b) give all parties to the case written notice that the case is on the Inactive Cases List.

(2) As soon as practicable after being notified under subrule (1), the solicitor for a party to the case must notify the party —

(a) of the fact that the case has been put on the Inactive Cases List and why; and

(b) the effect of rule 21.

20. Consequences of a case being on Inactive Cases List

(1) If a case is on the Inactive Cases List, no document in relation to the case, other than a summons for an order under subrule (2), can be filed in the Court.

(2) Any party to a case on the Inactive Cases List may apply to the Court for an order that the case be removed from the Inactive Cases List.

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

21. Cases on Inactive Cases List for 6 months to be taken to have been dismissed

(1) A case that has been on the Inactive Cases List for 6 continuous months is to be taken to have been dismissed for want of prosecution.

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

”.

15. Order 34 amended

(1) Order 34 rules 14 and 15 are repealed and the following rule is inserted instead —

"

14. Return of exhibits

(1) This rule does not apply to or in respect of any record or thing that forms part of the Court's record.

(2) After judgment in an action is given, a registrar must, unless the Court has ordered otherwise —

(a) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court to collect it from the court; and

(b) by a written notice, require any person who, under a subpoena, produced any record or thing to the Court that was not admitted in evidence, to collect it from the court.

(3) A registrar must not act under subrule (2) until —

(a) the time for commencing an appeal against the judgment expires; and

(b) any appeal commenced before that time expires is decided, dismissed or discontinued.

(4) Despite subrule (3), a registrar —

(a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or

(b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —

(i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or

(ii) it is necessary for that person to have use of the record or thing.

(5) If under subrule (4)(b) a registrar releases a record or thing to a person, the registrar may require the person, as a condition of being given it, to give a written undertaking to the Court as to the care maintenance and custody of it and its re-delivery to the Court.

(6) If a record or thing remains in the possession of the Court after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a judge may order a registrar to destroy it or dispose of it in some other way.

".

(2) Order 34 rule 15B is repealed.

16. Order 36 amended

(1) Order 36 rules 12, 13, 14, 15, 15A, 16, 16A, 17, 18 and 19 are repealed.

(2) Order 36 rule 20 is amended by deleting "fixed from time to time under section 142 of the Act in relation to judgment debts." and inserting instead —

"

prescribed from time to time for the purposes of section 8 of the *Civil Judgments Enforcement Act 2004*.

".

17. Order 36B inserted and Second Schedule amended

(1) After Order 36A the following Order is inserted —

"

Order 36B — Subpoenas

1. Interpretation

(1) In this Order, unless the contrary intention appears —

"addressee" means the person who is the subject of the order expressed in a subpoena;

"conduct money" means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet the reasonable expenses of the addressee of attending court as required by the subpoena and returning after so attending;

"issuing officer" means an officer empowered to issue a subpoena on behalf of the Court;

"issuing party" means the party at whose request a subpoena is issued;

"subpoena" means an order in writing requiring the addressee —

(a) to attend to give evidence; or

(b) to produce the subpoena or a copy of it and a document or thing; or

(c) to do both of those things.

(2) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a **"subpoena to attend to give evidence"**.

(3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is called a **"subpoena to produce"**.

2. Issuing of subpoena

(1) The Court may, in any proceeding, by subpoena order the addressee —

(a) to attend to give evidence as directed by the subpoena; or

(b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or

(c) to do both of those things.

(2) An issuing officer must not issue a subpoena —

(a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena —

(i) not be issued; or

(ii) not be issued without the leave of the Court and that leave has not been given;

or

(b) requiring the production of a document or thing in the custody of the Court or another court.

(3) The issuing officer must seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

(4) A subpoena is taken to have been issued on its being sealed or otherwise authenticated in accordance with subrule (3).

3. Form of subpoena

(1) A subpoena must be in accordance with Form No. 22, unless it is a subpoena for which leave to serve the subpoena in New Zealand is to be sought pursuant to Order 39A in which case the subpoena must be in accordance with Form No. 23 and must be accompanied by a notice in accordance with Form No. 23A.

(2) A subpoena must not be addressed to more than one person.

(3) Unless the Court otherwise orders, a subpoena must identify the addressee by name or by description of office or position.

(4) A subpoena to produce must —

(a) identify the document or thing to be produced; and

(b) specify the date, time and place for production.

(5) A subpoena to attend to give evidence must specify the date, time and place for attendance.

(6) The date specified in a subpoena must be the date of trial or any other date as permitted by the Court.

(7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.

(8) A subpoena must specify the last date for service of the subpoena, being a date not earlier than —

(a) 5 days; or

(b) any shorter or longer period as ordered by the Court and specified in the subpoena,

before the date specified in the subpoena for compliance with it.

(9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

4. Setting aside or other relief

(1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or in part, or grant other relief in respect of it.

(2) An application under subrule (1) must be made on notice to the issuing party.

(3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

5. Service

(1) A subpoena must be served personally on the addressee.

(2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee.

6. Compliance with subpoena

(1) An addressee need not comply with the requirements of a subpoena to attend to give evidence unless conduct money has been handed or tendered to the addressee a reasonable time before the date on which attendance is required.

(2) An addressee need not comply with the requirements of a subpoena unless it is served on or before the date specified in the subpoena as the last date for service of the subpoena.

(3) Despite rule 5(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on that addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(4) The addressee must comply with a subpoena to produce —

(a) by attending at the date, time and place specified for production and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or

(b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified for the purpose in the subpoena, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production.

(5) In the case of a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subrule (4) does not discharge the addressee from the obligation to attend to give evidence.

7. Production otherwise than upon attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 6(4)(b).

(2) The Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.

(3) If the addressee produces more than one document or thing, the addressee must, if requested by the Registrar, provide a list of the documents or things produced.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may at the time of production inform the Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

8. Removal, return, inspection, copying and disposal of documents and things

The Court may give directions in relation to the removal from and return to the Court, and the inspection, copying and disposal, of any document or

thing that has been produced to the Court in response to a subpoena.

9. Inspection of, and dealing with, documents and things produced otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 6(4)(b).

(2) On the request in writing of a party, the Registrar must inform the party whether production in response to a subpoena has occurred, and, if so, include a description, in general terms, of the documents and things produced.

(3) Subject to this rule, no person may inspect a document or thing produced unless the Court has granted leave and the inspection is in accordance with that leave.

(4) Unless the Court otherwise orders, the Registrar may permit the parties to inspect at the Registry any document or thing produced unless the addressee, a party or any person having sufficient interest objects to the inspection under this rule.

(5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify the Registrar in writing of the objection and of the grounds of the objection.

(6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify the Registrar in writing of the objection and of the grounds of the objection.

(7) On receiving notice of an objection under this rule, the Registrar —

(a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and

(b) must refer the objection to the Court for hearing and determination.

(8) The Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard, and the issuing party must notify the addressee, the objector and each other party accordingly.

(9) The Registrar must not permit any document or thing produced to be removed from the Registry except on application in writing signed by the solicitor for a party.

(10) A solicitor who signs an application under subrule (9) and removes a document or thing from the Registry, undertakes to the Court by force of this rule that —

(a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and

(b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Registrar.

(11) The Registrar may, in the Registrar's discretion, grant an application under subrule (9) subject to conditions or refuse to grant the application.

10. Disposal of documents and things produced

(1) Unless the Court otherwise orders, the Registrar may, in the Registrar's discretion, return to the addressee any document or thing produced in response to the subpoena.

(2) Unless the Court otherwise orders, the Registrar must not return any document or thing under subrule (1) unless the Registrar has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.

(3) If the addressee has informed the Court that a document or a copy of a document produced need not be returned and may be destroyed, the Registrar may, unless the Court otherwise orders, destroy the document or copy instead of returning it.

(4) The Registrar must not destroy a document or a copy of a document unless the Registrar has first given to the issuing party and to the addressee at least 14 days' notice of the intention to destroy the document or copy.

(5) Unless the Court otherwise orders, this Order is subject to Order 34 rules 15A and 15B.

11. Costs and expenses of compliance

(1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

(2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.

(3) An amount fixed under this rule is separate from and in addition to —

(a) any conduct money paid to the addressee; and

(b) any witness expenses payable to the addressee.

12. Failure to comply with subpoena — contempt of court

(1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

(2) Despite rule 5(1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

13. Documents and things in the custody of a court

(1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform the Registrar in writing accordingly, identifying the document or thing.

(2) If the document or thing is in the custody of the Court, the Registrar must produce the document or thing —

(a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or

(b) as the Court directs.

(3) If the document or thing is in the custody of another court, the Registrar must, unless the Court has otherwise ordered —

(a) request the other court to send the document or thing to the Registrar; and

(b) after receiving it, produce the document or thing —

(i) in Court or to any person authorised to take evidence in the proceeding as required by the party; or

(ii) as the Court directs.

".

(2) Forms 21, 22, 22A, 22B and 24 are deleted.

(3) Form 23 is amended by deleting "[O. 36 R. 12(1)]" and inserting instead —

" [O. 36B R. 3(1)] ".

(4) Form 23A is amended by deleting "[O. 36 R. 12(1a)]" and inserting instead —

" [O. 36B R. 3(1)] ".

(5) After Form 20 the following form is inserted —

"

21. Subpoena (O. 36B r. 3(1))

Supreme Court of Western Australia General Division/Court of Appeal	No: **Subpoena**	
Parties	Plaintiff Defendant	
To: [Witness's details]	[*Full name and address*]	
Order [Select one only of these 3 options.]	**You are ordered —** □ **to attend to give evidence — see section A of this form; or** □ **to produce this subpoena or a copy of it and the documents or things specified in the Schedule — see section B of this form; or** □ **to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule — see section C of this form.**	
Warning	**Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.**	
Last date for service [See Note 1]	The last date for service of this subpoena is:	
Notes	**Please read Notes 1 to 15 at the end of this subpoena.**	
Issuing details	Date of issue: Issued at the request of [*name of party*], whose service details are:	Seal or stamp of the Court
Section A — Details of subpoena to attend to give evidence only.		
Order	Date, time and place at which you must attend to give evidence: Date: Time: Place:	
	You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.	
Section B — Details of subpoena to produce only.		
Order	You must comply with this subpoena — (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear days before the date specified for attendance and production. (See Notes 5–11.)	

	Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things: Date: Time: Place: Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted: The Registrar, [*Name of court … etc. as the case may be.*]
Schedule **[If insufficient space attach list]**	The documents and things you must produce are as follows:
Section C — Details of subpoena to both attend to give evidence and produce.	
Order	In so far as you are required by this subpoena to attend to give evidence, you must attend as follows: Date: Time: Place:
	You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.
	In so far as you are required by this subpoena to produce the subpoena or a copy of it and documents or things, you must comply with this subpoena — (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to the Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear days before the date specified for attendance and production. (See Notes 5–11.) Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things: Date: Time: Place: Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted: The Registrar, [*Name of court … etc. as the case may be.*]

Schedule **[If insufficient space attach list]**	The documents and things you must produce are as follows:

Notes

Last day for service

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Conduct money

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date on which your attendance is required.

Production of subpoena or copy of it and documents or things by delivery or post

5. In so far as this subpoena requires production of the subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the Registrar in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the Registrar may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by the Registrar, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

Return or destruction of documents or copies

10. You may, at the time of production, inform the Court that any document or copy of a document produced need not be returned and may be destroyed.
11. If you have so informed the Court, the Registrar may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. You have the right to apply to the Court —
    (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
    (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

13. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Contempt of court — arrest

14. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

15. Note 14 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

".

18. Order 37 amended

(1) Order 37 rule 2(5) is repealed.

(2) Order 37 rule 2(6) is amended as follows:

(a) in paragraph (b) by deleting "annexures," and inserting instead —

" attachments, ";

(b) by deleting "and annexures" and inserting instead —

" and attachments ".

(3) Order 37 rule 2(7) is repealed and the following subrule is inserted instead —

"

(7) If an affidavit has one or more attachments, an index which refers to the affidavit and lists each attachment, its page numbers and a short description of it, must be bound with the affidavit.

".

(4) Order 37 rule 2(8) is amended by deleting "annexed" in the 2 places it occurs and in each place inserting instead —

" attached ".

(5) Order 37 rule 2(9) is amended by deleting "annexures" and inserting instead —

" attachments ".

(6) Order 37 rule 2(10) is amended by deleting "annexures" and inserting instead —

" attachments ".

(7) Order 37 rule 4 is repealed.

(8) Order 37 rule 4A is repealed.

(9) Order 37 rule 8 is repealed.

(10) Order 37 rule 9(1) is amended by deleting "annexed" in the 2 places where it occurs and in each place inserting instead —

" attached ".

(11) Order 37 rule 10 is repealed.

(12) Order 37 rule 11 is repealed.

(13) Order 37 rule 12 is repealed.

(14) Order 37 rule 15 is amended by deleting "Commissioner or officer" and inserting instead —

" person ".

(15) After Order 37 rule 15 the following rule is inserted —

"

16. This Order additional to *Oaths, Affidavits and Statutory Declarations Act 2005*

This Order is in addition to the *Oaths, Affidavits and Statutory Declarations Act 2005*.

".

19. Order 38 amended

(1) Order 38 rule 4(2) is amended by deleting "writ of".

(2) Order 38 rule 18 is repealed.

20. Order 38A amended

Order 38A rule 2 is repealed and the following rule is inserted instead —

"

2. Application of this Order

This Order applies to applications made under section 110 or 111 of the Act.

".

21. Order 44 repealed

Order 44 is repealed.

22. Order 45 amended

After Order 45 rule 10 the following rules are inserted —

"

11. Master etc. may be ordered to take accounts or make inquiries

(1) If under this Order the Court orders that an account be taken or that an inquiry be made, the Court may order that it be taken or made by a Master, or by a Registrar or other proper officer.

(2) The Court may, in respect of any order made under subrule (1), make any ancillary orders and give any directions that may be necessary.

12. Right to adjournment from Registrar etc.

If a Registrar or other proper officer, but not a Master, is taking an account or making an inquiry, a party has the right to have the proceedings adjourned to a Judge in person without any further summons for that purpose.

".

23. Order 46 replaced

Order 46 is repealed and the following Order is inserted instead —

"

Order 46 — *Civil Judgments Enforcement Act 2004* rules

1. Interpretation

In this Order, unless the contrary intention appears —

"Act" means the *Civil Judgments Enforcement Act 2004*;

"section" means a section of the Act.

2. Applications that may be dealt with by a registrar

(1) Each of the following applications, if made to the Court, may be dealt with by a registrar —

(a) an application made under a section listed in the Table to this subrule;

(b) an application for an order under section 10, 15(5)(a) or 20(3);

(c) an application for leave under section 13(1)(a).

Table

s. 15(1)	s. 41(2)	s. 59(1)
s. 27	s. 42(1)	s. 95(1)
s. 28	s. 49(1)	s. 101(1)
s. 32	s. 55(2)	s. 102(2)
s. 33	s. 56(1)	s. 103(2)
s. 35(1)	s. 58(1)	

(2) A registrar who is dealing with an application or request may exercise any power conferred by the Act on the Court in respect of the application.

(3) A registrar may conduct a means inquiry under section 30 and for that purpose exercise any power in section 30 or 31.

".

24. Order 47 repealed and Second Schedule amended

(1) Order 47 is repealed.

(2) Forms 45, 46, 47, 48, 49, 50, 51 and 52 are deleted.

25. Order 48 repealed

Order 48 is repealed.

26. Order 49 repealed and Second Schedule amended

(1) Order 49 is repealed.

(2) Forms 53, 54 and 55 are deleted.

27. Order 50 repealed and Second Schedule amended

(1) Order 50 is repealed.

(2) Forms 56, 57, 58 and 59 are deleted.

28. Order 51 amended and Second Schedule amended

(1) Order 51 rule 2 is repealed.

(2) Order 51 rule 7(3) is amended by deleting "fixed from time to time under section 142 of the Act in relation to judgment debts." and inserting instead —

"

prescribed from time to time for the purposes of the *Civil Judgments Enforcement Act 2004* section 8.

".

(3) After Order 51 rule 10 the following rule is inserted —

"

11. Application of this Order

Unless the Court orders otherwise, this Order, with any necessary changes, applies to and in respect of the appointment of a receiver under the *Civil Judgments Enforcement Act 2004* Part 4 Division 7.

".

(4) Form 60 is amended by deleting "in or towards satisfaction of the moneys and interest due to the plaintiff under the judgment in this action dated the day of 20 " and inserting instead —

"

, for the following purposes, namely [*state the purposes*], and on the following terms, namely [*state the terms*],

".

(5) Form 61 is amended as follows:

(a) by deleting ", on the usual terms";

(b) by deleting "in or towards satisfaction of the sum of $ debt and $ costs, and interest on the said sums at the rate of $ per cent. per annum from the day of 20

due under the judgment in this action dated the day of 20 " and inserting instead —

"

, for the following purposes, namely [*state the purposes*], and on the following terms, namely [*state the terms*],

".

29. Orders 52A and 52B inserted

After Order 52 the following Orders are inserted —

"

Order 52A — Freezing orders

1. Interpretation

In this Order, unless the contrary intention appears —

"ancillary order" has the meaning given by rule 3;

"another court" means a court outside Australia, or a court in Australia other than the Supreme Court of Western Australia;

"applicant" means a person who applies for a freezing order or an ancillary order;

"freezing order" has the meaning given by rule 2;

"judgment" includes an order;

"respondent" means a person against whom a freezing order or ancillary order is sought or made.

2. Freezing order

(1) The Court may make an order (a **"freezing order"**), upon or without notice to the respondent, for the purpose of preventing the frustration or inhibition of the Court's process by seeking to meet a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied.

(2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.

3. Ancillary order

(1) The Court may make an order (an ancillary order) ancillary to a freezing order or prospective freezing order as the Court considers appropriate.

(2) Without limiting the generality of subrule (1), an ancillary order may be made for either or both of the following purposes —

(a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;

(b) determining whether the freezing order should be made.

4. Respondent need not be party to proceeding

The Court may make a freezing order or an ancillary order against a respondent even if the respondent is not a party to a proceeding in which substantive relief is sought against the respondent.

5. Order against judgment debtor, prospective judgment debtor or third party

(1) This rule applies if —

(a) judgment has been given in favour of an applicant by —

(i) the Court; or

(ii) in the case of a judgment to which subrule (2) applies — another court;

or

(b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in —

(i) the Court; or

(ii) in the case of a cause of action to which subrule (3) applies — another court.

(2) This subrule applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

(3) This subrule applies to a cause of action if —

(a) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and

(b) there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

(4) The Court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the Court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because any of the following might occur —

(a) the judgment debtor, prospective judgment debtor or another person absconds; or

(b) the assets of the judgment debtor, prospective judgment debtor or another person are —

(i) removed from Australia or from a place inside or outside Australia; or

(ii) disposed of, dealt with or diminished in value.

(5) The Court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a **"third party"**) if the Court is satisfied, having regard to all the circumstances, that —

(a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because —

(i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or

(ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor;

or

(b) a process in the Court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.

(6) Nothing in this rule affects the power of the Court to make a freezing order or ancillary order if the Court considers it is in the interests of justice to do so.

6. Court's other jurisdiction not affected

Nothing in this Order diminishes the inherent, implied or statutory jurisdiction of the Court to make a freezing order or ancillary order.

7. Service outside Australia of application for order

An application for a freezing order or an ancillary order may be served on a person who is outside Australia (whether or not the person is domiciled or resident in Australia) if any of the assets to which the order relates are within the jurisdiction of the Court.

8. Costs

(1) The Court may make any order as to costs as it considers appropriate in relation to an order made under this Order.

(2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

Order 52B — Search orders

1. Interpretation

In this Order, unless the contrary intention appears —

"applicant" means an applicant for a search order;

"described" includes described generally whether by reference to a class or otherwise;

"premises" includes a vehicle or vessel of any kind;

"respondent" means a person against whom a search order is sought or made;

"search order" has the meaning given by rule 2.

2. Search order

The Court may make an order (a search order), in any proceeding or in anticipation of any proceeding in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence which is or may be relevant to an issue in the proceeding or anticipated proceeding.

3. Requirements for making of search order

The Court may make a search order if it is satisfied that —

(a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

(c) there is sufficient evidence in relation to a respondent that —

(i) the respondent possesses important evidentiary material; and

(ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

4. Court's other jurisdiction not affected

Nothing in this Order diminishes the inherent, implied or statutory jurisdiction of the Court to make a search order.

5. Terms of search order

(1) In this rule —

"record" includes a copy, photograph, film or sample.

(2) A search order may direct each person who is named or described in the order —

(a) to permit, or arrange to permit, such other persons as are named or described in the order —

(i) to enter premises specified in the order; and

(ii) to take any steps that are in accordance with the terms of the order;

and

(b) to provide, or arrange to provide, such other persons named or described in the order with any information, thing or service described in the order; and

(c) to allow such other persons named or described in the order to take and retain in their custody any thing described in the order; and

(d) not to disclose any information about the order, for up to 3 days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and

(e) to do or refrain from doing any act as the Court considers appropriate.

(3) Without limiting the generality of subrule (2)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include —

(a) searching for, inspecting or removing the thing; and

(b) making or obtaining a record of the thing or any information it may contain.

(4) A search order may contain such other provisions as the Court considers appropriate.

6. Independent solicitors

(1) If the Court makes a search order, the Court must appoint one or more solicitors, each of whom is independent of the applicant's solicitors, (the

"independent solicitors") to supervise the execution of the order, and to do such other things in relation to the order as the Court considers appropriate.

(2) The Court may appoint an independent solicitor to supervise execution of the order at any one or more premises, and a different independent solicitor or solicitors to supervise execution of the order at other premises, with each independent solicitor having power to do such other things in relation to the order as the Court considers appropriate.

7. Costs

(1) The Court may make any order as to costs that it considers appropriate in relation to an order made under this Order.

(2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a search order.

".

30. Order 56 amended

(1) In Order 56 the heading "1 — General" before rule 1 is deleted and the following heading is inserted instead —

"

Division 1 — General

".

(2) Order 56 rules 2 and 3 are repealed and the following rules are inserted instead —

"

2. Application for order to show cause, procedure on

(1) An application for an order to show cause shall be first listed before a Judge in chambers.

(2) The Judge may —

(a) refuse the application; or

(b) make an order to show cause and order that it shall be heard by —

(i) a Judge in chambers or in court; or

(ii) the Court of Appeal,

and, unless an order to show cause is made, may do any or all of the following —

(c) direct that the application be decided by a Judge sitting in court;

(d) direct that notice of the application be served on such persons as the Judge directs;

(e) adjourn the hearing of the application.

(3) If an order to show cause is made that is to be heard by the Court of Appeal, the *Supreme Court (Court of Appeal) Rules 2005* apply in addition to this Order.

3. Order to show cause, terms of

(1) An order to show cause may include terms as to costs, and as to giving security, or otherwise.

(2) The Court may order that an order to show cause why a writ of Certiorari or Prohibition should not issue operates as a stay of the proceedings in question until such time as the Court specifies in the order or orders otherwise.

".

(3) Order 56 rule 5 is repealed.

(4) In Order 56 the heading "2 — Certiorari" before rule 11 is deleted and the following heading is inserted instead —

"

Division 2 — Certiorari

".

(5) In Order 56 the heading "3 — Mandamus" before rule 15 is deleted and the following heading is inserted instead —

"

Division 3 — Mandamus

".

(6) In Order 56 the heading "4 — Prohibition" before rule 30 is deleted and the following heading is inserted instead —

"

Division 4 — Prohibition

".

(7) In Order 56 the heading "5 — Quo Warranto" before rule 34 is deleted and the following heading is inserted instead —

"

Division 5 — Quo warranto

".

(8) Order 56 rule 10(1) is repealed and the following subrule is inserted instead —

"

(1) A writ issued in proceedings to which this Order relates must —

(a) be prepared by the party seeking to issue it; and

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

(i) the party's geographical address; and

(ii) the party's service details;

and

(c) be issued out of the Central Office.

".

31. Order 56A amended

Order 56A is amended as follows:

(a) by renumbering the rule 3 that begins with "If a review" as rule 4;

(b) by renumbering rule 4 as rule 5;

(c) by renumbering rule 5 as rule 6.

32. Order 57 amended

(1) Order 57 rule 1(1) is amended by deleting "the Court of Appeal, or to".

(2) Order 57 rule 2(1) is repealed and the following rule is inserted instead —

"

(1) The Judge to whom an application is made under rule 1 ex parte may —

(a) refuse the application; or

(b) order that the writ be issued immediately,

and, unless an order is made for the writ to issue immediately, may do any or all of the following —

(c) if the Judge is not sitting in court, direct that the application be decided by a Judge sitting in court;

(d) direct that notice of the application be served on the person against whom the issue of the writ is sought;

(e) adjourn the hearing of the application.

".

(3) Order 57 rule 2(2) is amended by deleting "summons or" in the 2 places it occurs.

(4) Order 57 rule 6 is repealed and the following rule is inserted instead —

"

6. Order for issue of writ, contents of

(1) If a Judge orders that a writ of habeas corpus be issued, the order must state —

(a) the date on which the writ is returnable; and

(b) whether the writ is returnable before a Judge or the Court of Appeal.

(2) If a writ is made returnable before the Court of Appeal, the *Supreme Court (Court of Appeal) Rules 2005* apply in addition to this Order.

".

33. Order 59 amended

(1) Order 59 rule 1 is amended as follows:

(a) by inserting before "The business" the subrule designation "(1)";

(b) by deleting paragraph (3a) and inserting the following paragraphs instead —

"

(3a) any application that may be made to the Court or a Judge under a written law of the State or a law of the Commonwealth except —

(i) an appeal, or an application to review a decision; and

(ii) an application that the law says cannot be heard in chambers;

(3b) applications for the leave of the Court;

".

(2) At the end of Order 59 rule 1 the following subrule is inserted —

"

(2) All proceedings before a Registrar are to be conducted in chambers unless a Judge orders, or a written law provides, otherwise.

".

34. Order 60 replaced and Second Schedule amended

(1) Order 60 is repealed and the following Order is inserted instead —

"

Order 60 — Masters' jurisdiction

1. Masters' general jurisdiction

(1) A Master has the same jurisdiction that a Judge sitting in chambers has under the *Supreme Court Act 1935* or these rules, unless it is expressly stated otherwise.

(2) A Master has jurisdiction to hear and determine any action, application or proceeding that the Chief Justice or the Judge in charge of the civil list directs is to be heard and determined by a Master, even if it cannot be heard and determined by a Judge sitting in chambers.

(3) Despite subrules (1) and (2) a Master does not have jurisdiction in respect of any of the following —

(a) proceedings relating to the liberty of a person;

(b) proceedings for contempt of court;

(c) proceedings seeking prerogative relief;

(d) proceedings seeking a review order under the *Magistrates Court Act 2004* section 36;

(e) proceedings seeking leave to appeal;

(f) proceedings under a written law, other than these rules, that must be heard and determined by a Judge;

(g) proceedings under Order 65C.

(4) Despite subrule (3), a Master has jurisdiction to hear and determine any proceeding, not otherwise within a Master's jurisdiction —

(a) if the parties to the proceeding consent; or

(b) if the terms of any order made in the proceeding are agreed between the parties to the proceeding,

but a party's failure to seek or give consent does not prejudice the party's right to costs on a summons before a Judge.

(5) For the purposes of any proceedings before him or her, a Master may exercise the powers of the Court under any of the following enactments —

(a) *Evidence Act 1906* section 16(1)(b), 51 or 52;

(b) *Prisons Act 1981* section 22.

(6) For the purposes of any proceedings before him or her, a Master has the same jurisdiction as a Judge would have if the proceedings were before a Judge.

(7) For the purpose of any proceedings before a Master, these rules apply to and in respect of any person who is summoned to appear or who appears in the proceedings as if the proceedings were before a Judge.

2. Master may refer proceedings to Judge or Court of Appeal

(1) A Master may refer an application or proceeding to a Judge or the Court of Appeal for determination and may make an order pending the determination.

(2) The power in subrule (1) may be exercised by a Master —

(a) on his or her own initiative;

(b) in the absence of the parties;

(c) before the hearing date of the application or proceeding.

(3) The Judge or Court of Appeal may hear and determine the application or proceeding or may refer it back to the Master with or without directions.

".

(2) Form 79 is repealed.

35. Order 61 amended

(1) After Order 61 rule 15 the following rule is inserted —

"

15A. Claims to state claimant's contact details

A claim made under this Order by a claimant must, in accordance with Order 71A, state —

(a) the claimant's geographical address; and

(b) the claimant's service details.

".

(2) Order 61 rule 22 is repealed.

36. Order 62 amended

(1) Order 62 rule 3 is amended as follows:

(a) by inserting after paragraphs (a) and (b) —

" and ";

(b) by deleting paragraph (d) and inserting instead —

"

(d) in accordance with Order 71A —

(i) the trustee's geographical address; and

(ii) the trustee's service details.

".

(2) Order 62 rule 5(1) is repealed and the following subrule is inserted instead —

"

(1) A summons relating to money or securities paid into court under the said Act or the dividends of them must, in accordance with Order 71A, state —

(a) the applicant's geographical address; and

(b) the applicant's service details.

".

37. Order 65 replaced and Second Schedule amended

(1) Order 65 is repealed and the following Order is inserted instead —

"

Order 65 — Appeals to the General Division

Division 1 — Preliminary matters

1. Interpretation

In this Order, unless the contrary intention appears —

"appeal" means an appeal or application to which this Order applies;

"appeal notice" means a notice in the form of Form No. 83;

"concluded", in relation to an appeal, means decided, dismissed or discontinued;

"interim order" in an appeal, means —

(a) an order staying the proceedings in the primary court or the execution of the primary court's decision;

(b) an urgent appeal order;

(c) an order that an appellant provide security for a respondent's costs;

(d) an order extending or shortening the time for obeying a requirement of these rules, other than the time for commencing an appeal;

(e) any other order that the Court may make before the appeal is concluded, other than an order giving or refusing to give leave to appeal;

"primary court", in relation to an appeal, means the court, tribunal, body or person that made the decision being appealed;

"primary court's transcript" means —

(a) the transcript of the proceedings in the primary court; or

(b) if there is no electronic recording of the proceedings that can be transcribed —

(i) the notes made by the judicial officer who presided at the proceedings; and

(ii) one or more affidavits of people who were present at the proceedings about what happened in the proceedings.

2. Application of this Order

(1) This Order applies to any appeal, or application for leave to appeal, that may be made to the General Division of the Court, other than an appeal under the *Criminal Appeals Act 2004* Part 2.

(2) In respect of an appeal, or application for leave to appeal, to which this Order applies, this Order is subject to the written law under which the appeal or application is made.

Division 2 — General matters

3. Hearings by telephone

(1) A judge may conduct a hearing with one or more of the parties to an appeal by telephone.

(2) A hearing conducted by telephone is to be taken to be a hearing in the presence of the judge.

(3) A registrar must confirm in writing any order made at such a hearing.

4. Judge's general jurisdiction

(1) For the purposes of dealing with an appeal, a judge has jurisdiction to make any order that the judge considers will or may facilitate the appeal being conducted and concluded efficiently, economically and expeditiously.

(2) Without limiting subrule (1), a judge has jurisdiction —

(a) to make a decision on the judge's own initiative or on an application by a party;

(b) to decide an application on the basis of the documents filed and without listing it for hearing;

(c) to make a decision on the judge's own initiative on the basis of the documents filed and without requiring the parties to attend a hearing;

(d) to hear and decide any application made during the appeal in the absence of any party other than the applicant;

(e) to hear and decide the appeal in the absence of any party other than the applicant;

(f) to order some or all of the parties to do one or more of the following in respect of the appeal, or any aspect of it specified by the judge —

(i) to file, before a date set by the judge, any document specified by the judge;

(ii) to appear and make oral submissions on a date set by the judge;

(g) to order a party to file and serve an appeal book;

(h) to order any or all of the parties to file and serve —

(i) written submissions;

(ii) a chronology of events relevant to the appeal;

(iii) a list of the principal legal authorities on which the party relies;

(i) to limit the time a party has to make oral submissions at a hearing before a judge.

(2) If a judge makes a decision on the basis of the documents filed without requiring the parties to attend a hearing, rule 7 applies.

5. Non-attendance by party, consequences of

(1) If a hearing before a judge is adjourned because a party who has been notified of it does not attend, the judge may order the party or the party's lawyer to pay the costs of any party who attended.

(2) If a party who has been notified of a hearing does not attend the hearing before a judge, the judge may proceed in the party's absence.

6. Decisions made in absence of a party

(1) If in a party's absence a judge makes an order, whether or not at a hearing, the judge may subsequently, but before the order is carried out, set aside the order and again deal with the matter that gave rise to the order.

(2) If in a party's absence a judge makes a decision in an appeal, whether or not at a hearing, a registrar must notify the party of the decision.

7. Decisions made on the papers

(1) This rules applies if another rule in this Order says it applies.

(2) If a decision is made under the other rule on the basis of the documents filed without requiring the parties to attend a hearing (the **"provisional decision"**), a registrar must serve the parties with written notice of the provisional decision.

(3) If a party wants a hearing of the matter that gave rise to the provisional decision, the party must file a Form No. 88 (Request for a hearing) within 5 working days after the date on which the party is served with the notice of the provisional decision.

(4) If no party files a Form No. 88 under subrule (3), the provisional decision becomes the final decision on the matter.

(5) If any party files a Form No. 88 under subrule (3), a registrar must list the matter for hearing by the judge who made the provisional decision or, if he or she is absent, before another, and notify the parties.

(6) At the hearing the provisional decision may be confirmed, amended or set aside.

(7) The decision made at the hearing is the final decision on the matter.

(8) Any right to appeal against, or to make an application as a result of or in respect of, a final decision on a matter cannot be exercised in relation to a provisional decision until it becomes a final decision.

Division 3 — Procedure on appeals

8. Nature of appeals

An appeal will be by way of rehearing unless another written law provides otherwise.

9. Time for appealing

An appeal against a decision must be commenced within 21 days after the date of the decision.

10. Appeal, how to commence

(1) To —

(a) commence an appeal within time; or

(b) apply for an extension of time within which to commence an appeal,

the appellant must file —

(c) a Form No. 83 (Appeal notice) that sets out the grounds for the appeal in accordance with subrule (2); and

(d) any document required by subrule (3) or (4); and

(e) a copy of the relevant records filed with the primary court in respect of the case in which the decision being appealed was made; and

(f) a copy of the primary court's transcript; and

(g) a copy of every other record that the Court will need to decide the appeal.

(2) The grounds of appeal must not merely allege —

(a) that the primary court erred in fact or in law; or

(b) that the primary court's decision is against the evidence or the weight of evidence or is unreasonable and cannot be supported having regard to the evidence; or

(c) that the primary court's decision is unsafe or unsatisfactory.

(3) If the Form No. 83 says that an extension of time within which to commence the appeal is needed, the form must be filed with an affidavit by the applicant or the applicant's lawyer or both explaining why the appeal was not commenced within time.

(4) A Form No. 83 may be filed together with an application, made in accordance with rule 13, for an interim order.

(5) If an appellant requires leave to appeal, a Form No. 83 filed in accordance with this rule is to be taken to be an application for leave to appeal.

(6) Any document filed under this rule must be served on the respondent.

(7) As soon as practicable after serving the respondent the appellant must file a Form No. 84 (Service certificate).

11. Primary court to be notified and to supply records

(1) In this rule —

"primary court case" means the case in the primary court.

(2) As soon as practicable after an appeal notice is filed, a registrar must give the primary court concerned —

(a) a copy of the appeal notice; and

(b) a notice that specifies —

(i) the records or things held by the primary court in relation to the primary court case that the primary court must give to the Court for the purposes of the appeal; and

(ii) the date by which the primary court must provide the records or things.

(3) Any copy of a document given by the primary court to the Court need not be certified by the primary court.

(4) If any record given to the Court contains information to which access by any person is or should be restricted, the primary court must advise the Court.

12. Respondent's options

(1) On being served with an appeal notice, a respondent may file a Form No. 85 (Notice of respondent's intention).

(2) If the respondent files a Form No. 85, it must be filed within 7 days after the date on which the respondent is served with the appeal notice.

(3) A Form No. 85 may be filed together with an application, made in accordance with rule 13, for an interim order.

(4) If a respondent does not file a Form No. 85 within the 7 days or any extension of that period ordered by the court, the respondent is not entitled to take part or be heard in the appeal and is not a party to the appeal for the purposes of these rules.

13. Interim order, applying for

(1) At any time after an appeal is commenced and before it is concluded a party may apply for an interim order or an order amending or cancelling an interim order.

(2) To make such an application, the party must file a Form No. 86 (Application in an appeal) with —

(a) an affidavit by the applicant or the applicant's lawyer or both explaining why the interim order is wanted; and

(b) a document setting out the proposed order,

unless a judge orders otherwise.

14. Urgent appeal order, nature of

(1) An urgent appeal order in relation to an appeal is an order that the appeal is an urgent appeal that must be heard as quickly as practicable consistent with the proper administration of justice.

(2) An urgent appeal order must include an order setting a timetable for the various requirements of these rules and may include —

(a) an order dispensing with or modifying any such requirement;

(b) any order that will or may facilitate the appeal being heard as quickly as practicable consistent with the proper administration of justice.

15. Consenting to orders

The parties to an appeal may consent to an interim or other order, other than an urgent appeal order, being made by filing a Form No. 87 (Consent notice).

16. Appeal books not needed unless ordered

An appeal book containing the documents needed to decide the appeal is not required unless it has been ordered under rule 4.

Division 4 — Concluding an appeal

17. Discontinuing an appeal

(1) The appellant may discontinue an appeal by filing and serving a Form No. 89 (Discontinuance notice).

(2) If it appears to the court that the appellant is a person under disability (as defined in Order 70 rule 1), the Form No. 89 does not have effect unless it is approved by a judge.

(3) An application for the approval of a judge must be filed with an affidavit and, unless a judge orders otherwise, an opinion by an independent lawyer.

(4) Unless a judge orders otherwise, an appellant who discontinues an appeal must pay the respondent's costs in respect of the appeal which must be taxed if they are not agreed.

(5) In an appeal where the respondent also appeals against the primary court's decision, subrules (1) to (4) and Form No. 89 apply with any necessary changes.

(6) The discontinuance of an appeal by the appellant does not affect any appeal by a respondent who also appeals against the primary court's decision.

18. Settling an appeal

(1) The parties to an appeal may file a Form No. 87 (Consent notice), modified as necessary, stating the final order that the parties consent to being made in the appeal.

(2) When a consent notice is filed, the registrar must refer it to a judge who may direct the registrar —

(a) to issue a final order in accordance with the notice; or

(b) to notify the parties that the judge will decide the final orders at a hearing.

(3) A settlement or compromise of an appeal to which a person who appears to the court to be under disability (as defined in Order 70 rule 1) is a party has no effect unless it is approved by a judge of appeal.

(4) An application for the approval of a judge of appeal must be filed with an affidavit and, unless a judge of appeal orders otherwise, an opinion by an independent lawyer.

19. Return of exhibits

(1) This rule does not apply to or in respect of any record or thing that forms part of the Court's record.

(2) After an appeal is concluded, a registrar must, unless the Court has ordered otherwise —

(a) return any record or thing given to the Court by the primary court to the primary court; and

(b) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court to collect it from the court; and

(c) by a written notice, require any person who, under a subpoena, produced any record or thing to the Court that was not admitted in evidence, to collect it from the court.

(3) A registrar must not act under subrule (2) until —

(a) the time for commencing proceedings in the Court of Appeal in relation to the appeal has expired; or

(b) if proceedings in the Court of Appeal in relation to the appeal are commenced before that time expires, the proceedings are concluded.

(4) Despite subrule (3), a registrar —

(a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or

(b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —

(i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or

(ii) it is necessary for that person to have use of the record or thing.

(5) If under subrule (4)(b) a registrar releases a record or thing to a person, the registrar may require the person, as a condition of being given it, to give a written undertaking to the Court as to the care maintenance and custody of it and its re-delivery to the Court.

(6) If a record or thing remains in the possession of the Court after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a judge may order a registrar to destroy it or dispose of it in some other way.

".

(2) Forms 83 to 93 are deleted and the following forms are inserted instead —

"

83. Appeal notice (O. 65 r. 10)

Supreme Court of Western Australia General Division	No:
	Appeal notice

Parties to the appeal		Appellant Respondent

Primary court's decision		
Primary court Case number Parties Date of decision Judicial officer	at	
Decision details		
Appeal details		
Notice of appeal	The appellant appeals to the Supreme Court (General Division) against the above decision.	
Act that allows the appeal[1]	section:	
Grounds of appeal[2]	1.	
Notice to the respondent	If you want to take part in this appeal you must lodge a Form No. 85 under the *Rules of the Supreme Court 1971* within 7 days after you are served with this notice and serve it on the appellant.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Leave to appeal	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the appellant legally represented in this appeal? Yes/No[3] Is the appellant applying for legal aid? Yes/No	
Appellant's details		
Appellant's geographical address[3]		
Appellant's service details[3]		
Signature and date		
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form No. 83 —

1. State the short title of the Act under which the appeal is being made.
2. Set out the grounds in numbered paragraphs.
3. Must be in accordance with Order 71A.

84. Service certificate (O. 65 r. 10(7))

Supreme Court of Western Australia General Division	No: **Service certificate**	
Parties to the appeal	Appellant Respondent	
Certificate	I certify that on [*date*] at [*place*] [*name of server*] served the respondent personally with — • a copy of an appeal notice dated [*date*]; and • a copy of every other document that was lodged with the appeal notice. I undertake to lodge an affidavit of service if the Court requires me to.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

85. Notice of respondent's intention (O. 65 r. 12)

Supreme Court of Western Australia General Division	No: **Notice of respondent's intention**	
Parties to the appeal	Appellant Respondent	
Notice [Tick one box]	☐ The respondent intends to take part in this appeal. ☐ The respondent does not intend to take part in this appeal and will accept any order made by the court in the appeal other than as to costs.	
Cross appeal [Tick one box]	☐ The respondent is not appealing against the primary court's decision specified in the appellant's appeal notice. ☐ The respondent also appeals against the primary court's decision specified in the appellant's appeal notice.	
Last date for appealing[1]	Last date: Is an extension of time needed? Yes/No	
Leave to appeal[1]	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the respondent legally represented in this appeal? Yes/No Is the respondent applying for legal aid? Yes/No	
Respondent's details		
Respondent's geographical address[2]		
Respondent's service details[2]		
Signature and date		
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

Notes to Form No. 85 —

1. Complete this only if the respondent also appeals against the primary court's decision.
2. Must be in accordance with Order 71A.

86. Application in an appeal (O. 65 r. 13)

Supreme Court of Western Australia General Division	No: **Application in an appeal**	
Parties to the appeal	Appellant Respondent	
Applicant	Appellant/Respondent	
Application[1]	The applicant applies for —	
Conference between parties [Tick one box]	☐ The parties to this application have conferred about the issues giving rise to this application and have not resolved them. ☐ The parties to this application have not conferred about the issues giving rise to this application because[2]	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:

Notes to Form No. 86 —

1. State —
   - the order or orders sought; and
   - the written law and provision under which the application is made.
2. State the reasons why the parties have not conferred.

87. Consent notice (O. 65 r. 15 & 18)

Supreme Court of Western Australia General Division	No:	
	Consent notice	
Parties to the appeal	Appellant Respondent	
Consent	We consent to the following order being made —	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

88. Request for hearing (O. 65 r. 7)

Supreme Court of Western Australia General Division	No:	
	Request for hearing	
Parties to the appeal	Appellant Respondent	
Request	The appellant/respondent requests a hearing of the matter decided provisionally by [*name of judge*] on [*date*] in this appeal.	
Signature of party requesting or lawyer	Appellant/Respondent/ Appellant's lawyer/Respondent's lawyer	Date:

89. Discontinuance notice (O. 65 r. 17)

Supreme Court of Western Australia General Division	No:	
	Discontinuance notice	
Parties to the appeal	Appellant Respondent	
Notice	The appellant discontinues this appeal.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

".

38. Order 66 amended

Order 66 rule 12 is repealed.

39. Order 69 amended

(1) Order 69 rule 2(1) is amended as follows:

(a) by inserting after paragraphs (a), (b), (c), (d), (da), (e), (f) and (g) —

" and ";

(b) in paragraph (h) by inserting after subparagraphs (i) and (iii) —

" and ";

(c) by deleting paragraph (h)(iv), (v) and (vi) inserting instead —

"

(iv) the name of the party; and

(v) if the document is required to state it, the party's geographical address in accordance with Order 71A; and

(vi) the party's service details in accordance with Order 71A.

".

(2) Order 69 rule 5(1) is repealed and the following subrule is inserted instead —

"

(1) A party who supplies a copy of a document under this Order must indorse the copy with the party's service details before supplying it.

".

40. Order 70 amended

Order 70 rule 13(7) is amended by deleting "writ of".

41. Order 71A inserted

After Order 71 the following order is inserted —

"

Order 71A — Contact details of parties and others

1. Addresses of places, requirements for

(1) The address of a place stated under this Order must contain enough information to enable an individual to go to the place.

(2) For the purposes of, but without limiting, subrule (1) —

(a) the information must include any floor or level number, and any room, flat, suite or apartment number, necessary to enable an individual to go to the place;

(b) a post box number or road mail box or bag number is not enough information.

2. Geographical addresses

For the purposes of these rules the geographical address of a person is —

(a) if the person is an individual —

(i) the address of the place where he or she usually lives; or

(ii) if the person has no such address, the address of the place he or she usually works;

(b) if the person is a partnership, the address of the place that is the partnership's main place of business;

(c) if the person is a body corporate —

(i) if the body is required by the *Corporations Act 2001* of the Commonwealth to have a registered office — the address of the place where the registered office is situated;

(ii) if the body is incorporated under the *Associations Incorporation Act 1987* — the address of the place where a member of the body's committee usually lives;

(iii) in any other case — the address of the place that is the body's main place of business;

(d) if the person is the State, a Territory or the Commonwealth — the address of the place in Australia where the practitioner representing the person conducts business as a practitioner.

3. Service details

(1) If these rules require a document to state a person's service details and the person is self-represented, the document —

(a) must state a postal address in Australia that can be used to serve documents on the person; and

(b) may state one fax number that can be used to serve documents on the person; and

(c) may state one email address that can be used to serve documents on the person.

(2) If these rules require a document to state a person's service details and the person is represented by a practitioner, the document —

(a) must state the name of the practitioner; and

(b) must state the address of the place in Australia where the practitioner conducts business as a practitioner; and

(c) must state the practitioner's postal address; and

(d) with the practitioner's consent, may state any or all of the following —

(i) one fax number;

(ii) one email address;

(iii) the details of a document exchange approved by the Chief Justice,

in Australia that can be used to serve documents on the practitioner; and

(e) if the practitioner is the agent of another practitioner —

(i) must state the name of the principal practitioner; and

(ii) must state the address of the place in Australia where the principal practitioner conducts business as a practitioner; and

(iii) must state the principal practitioner's postal address; and

(iv) with the principal practitioner's consent, may state any of the information in paragraph (d) in respect of the principal practitioner.

(3) If under this rule a document states a fax number or an email address of a person, the person is to be taken to have consented to being served with documents by fax at that fax number or by means of email at that email address.

(4) If a practitioner practises in a business with one or more other practitioners or people —

(a) a fax number stated under subrule (2) must be the fax number of the business and not that of the practitioner personally; and

(b) an email address stated under subrule (2) must be the email address of the business and not that of the practitioner personally.

4. Documents without contact details to be rejected

The Central Office must reject a document submitted for filing or issuing if these rules require the document to state —

(a) a person's geographical address; or

(b) a person's service details,

and it does not do so in accordance with this Order.

5. Changes of information to be notified

(1) If a document states information required or permitted by rule 2 or 3, the person who filed the document —

(a) must promptly give notice of any change to the information; and

(b) may, in respect of any of the information that does not have to be stated under those rules, give notice that the information can no longer be used to serve documents; and

(c) may, in respect of any of the information that does not have to be, and has not been, stated under those rules, give notice of the information.

(2) Notice under subrule (1) —

(a) must be given by filing a notice in the Central Office and serving it on any person who has been given the information; and

(b) may be given as part of a notice given under Order 8.

6. Fictitious details in documents, court powers as to

If on the application of a party the Court is satisfied that any information stated in a document in purported compliance with this Order is fictitious, it may set aside the filing of the document or order the document to be rectified and may make any necessary consequential order.

”.

42. Order 72 amended

(1) After Order 72 rule 3 the following rule is inserted —

“

3A. Personal service on the State

Personal service of a document on the State may be effected by serving it accordance with rule 2 on the person in charge of administrative matters at the office of —

(a) the Attorney General; or

(b) if there is no Attorney General appointed, the Minister for Justice; or

(c) if there is neither an Attorney General nor a Minister for Justice appointed, the Minister of the State designated under the *Supreme Court Act 1935* section 154(3) or (4).

”.

(2) Order 72 rules 5 and 5A are repealed and the following rules are inserted instead —

"

5. Ordinary service, how effected

(1) This rule does not apply to a document that, under these rules, has to be served personally.

(2) This rule —

(a) does not prohibit personal service of a document to which it applies; and

(b) does not affect any written law that provides for how a document may be served on a body corporate.

(3) If under these rules a person has filed a document that, in accordance with Order 71A, states the person's service details, a document may be served on the person by addressing it in accordance with subrule (4) and —

(a) delivering it, or posting it by pre-paid post, to the postal address stated in the service details; or

(b) if some other method of serving the person is stated in the service details, using that method to serve it on the person.

(4) A document to be served on a person under subrule (3) must —

(a) if the person is self-represented, be addressed to the person;

(b) if the person is represented by a practitioner, be addressed to the practitioner;

(c) if the document is being served by fax, be sent with a cover page that states —

(i) the person to whom the fax is addressed; and

(ii) the sender's name and postal address; and

(iii) those of the sender's document exchange number, telephone number and fax number that can be used to contact the sender; and

(iv) the number of pages (including the cover page) being sent.

(5) If under these rules a person has not filed a document that, in accordance with Order 71A, states the person's service details, a document may be served on the person —

(a) by delivering it, or posting it by pre-paid post, to the person's geographical address or last known geographical address; or

(b) if the person is represented by a practitioner in connection with the proceedings to which the document relates — by delivering it to the place, or posting it by pre-paid post to the address of the place, where the practitioner conducts business as a practitioner; or

(c) by the means that the Court directs in a particular case.

5A. Ordinary service, when effected

(1) In this rule —

"working day" means a day other than a Saturday, a Sunday, or a pubic holiday throughout the State.

(2) A document that is sent to a person by a method in the Table to this rule is to be taken to be served on the person at the time stated opposite the method in the Table, unless the contrary is proved.

Table

No.	Method of serving a document	When the document is to be taken to be served
1.	Delivering it to a place.	If it is delivered before 4.00 p.m. on a working day, on that day. Otherwise on the first working day after it is delivered.
2.	Posting it by pre-paid post to an address.	When it would be delivered to the address in the ordinary course of post.
3.	Sending it by fax.	If it is sent by fax before 4.00 p.m. on a working day, on that day. Otherwise, on the first working day after the fax is sent.
4.	Sending it by email.	If it is sent by email before 4.00 p.m. on a working day, on that day. Otherwise, on the first working day after the email is sent.
5.	Delivering it to a document exchange.	On the first working day after it is delivered.

".

43. Order 73 amended

(1) Order 73 rule 11(1) is amended by deleting "exhibit" and inserting instead —

" , in accordance with Order 37 rule 2, attach ".

(2) Order 73 rule 11(2) is amended by deleting "exhibited thereto" and inserting instead —

" attached to it ".

(3) Order 73 rule 12(1) is amended as follows:

(a) by deleting "file" and inserting instead —

" attach to the affidavit ";

(b) by deleting "underlined in red ink" and inserting instead —

" in bold type ".

44. Order 75 amended

(1) Order 75 rule 4 is repealed.

(2) Order 75 rule 5 is amended by deleting "On the hearing of the summons for directions" —

" At the status conference held under Order 29A rule 6 ".

45. Order 75A amended

(1) Order 75A rule 3 is amended as follows:

(a) by inserting before "Within" the subrule designation "(1)";

(b) by inserting at the end of the rule the following subrule —

"

(2) The form of the oath or affirmation is —

I, [*name*] of [*address*], [*insert an oath or affirmation according to the Oaths, Affidavits and Statutory Declarations Act 2005*] that I will truly and honestly conduct myself in the practice of a barrister and solicitor of the Supreme Court of Western Australia to the best of my knowledge and ability.

".

(2) Order 75A rule 5 is repealed.

46. Order 76 amended and Second Schedule amended

(1) The heading to Order 76 is deleted and the following heading is inserted instead —

"

Order 76 — *Public Notaries Act 1979* rules

".

(2) After Order 76 rule 1 the following rule is inserted —

"

1A. Districts prescribed for the Act

For the purpose of the Act each district named in column 1 of the Table to this rule, comprising the local government districts (with boundaries as declared from time to time) listed opposite the name in column 2, is prescribed.

Table

Name of district	Local government districts that comprise the district	
Gascoyne District	Carnarvon	Shark Bay
	Exmouth	Upper Gascoyne
Goldfields-Esperance District	Coolgardie	Leonora
	Dundas	Menzies
	Esperance	Ngaanyatjarraku
	Kalgoorlie-Boulder	Ravensthorpe
	Laverton	
Great Southern District	Albany (Town)	Katanning
	Albany (Shire)	Kent
	Broomehill	Kojonup
	Cranbrook	Plantagenet
	Denmark	Tambellup
	Gnowangerup	Woodanilling
	Jerramungup	
Kimberley District	Broome	
	Derby-West Kimberley	
	Halls Creek	
	Wyndham-East Kimberley	
Mid West District	Carnamah	Mt. Magnet
	Chapman Valley	Mullewa
	Coorow	Murchison
	Cue	Northampton
	Geraldton	Perenjori
	Greenough	Sandstone
	Irwin	Three Springs
	Meekatharra	Wiluna
	Mingenew	Yalgoo
	Morawa	
Peel District	Boddington	Serpentine-Jarrahdale
	Mandurah	Waroona
	Murray	
Pilbara District	Ashburton	Port Hedland
	East Pilbara	Roebourne
South West District	Augusta-Margaret River	
	Bridgetown-Greenbushes	
	Donnybrook-Balingup	
	Boyup Brook	Dardanup
	Bunbury	Harvey
	Busselton	Nannup
	Capel	Manjimup
	Collie	

Name of district	Local government districts that comprise the district	
Wheatbelt District	Beverley	Narembeen
	Brookton	Narrogin (Town)
	Bruce Rock	Narrogin (Shire)
	Chittering	Northam (Town)
	Corrigin	Northam (Shire)
	Cuballing	Nungarin
	Cunderdin	Pingelly
	Dandaragan	Quairading
	Dalwallinu	Tammin
	Dowerin	Toodyay
	Dumbleyung	Trayning
	Gingin	Victoria Plains
	Goomalling	Wagin
	Kellerberrin	Wandering
	Kondinin	West Arthur
	Koorda	Westonia
	Kulin	Wickepin
	Lake Grace	Williams
	Merredin	Wongan-Ballidu
	Moora	Wyalkatchem
	Mt. Marshall	Yilgarn
	Mukinbudin	York

".

(3) Form 93A is amended by deleting "Magisterial District of , as the case may be" and inserting instead —

" *(name of district)* ".

(4) Form 93B is amended by deleting "Magisterial District of , as the case may be" and inserting instead —

" *(name of district)* in the State of Western Australia ".

(5) Form 93C is amended by deleting "Magisterial District of, in the State of Western Australia as the case may be" and inserting instead —

" *(name of district)* in the State of Western Australia ".

(6) Form 93D is amended by deleting "Magisterial District of in the State of Western Australia as the case may be" and inserting instead —

" *(name of district)* in the State of Western Australia ".

47. Order 78 repealed and Second Schedule amended

(1) Order 78 is repealed.

(2) Form 94 is deleted.

48. Order 81A repealed

Order 81A is repealed.

49. Order 81B and Second Schedule amended

(1) Order 81B is amended by inserting after rule 3 the following rule —

"

4. Appeals under the Act

The *Criminal Procedure Rules 2005* apply to and in respect of reviews and appeals under Part 5 of the Act.

".

(2) Forms 102, 103 and 104 are deleted.

50. Order 81C replaced and Second Schedule amended

(1) Order 81C is repealed and the following Order is inserted instead —

"

Order 81C — *Road Traffic Act 1974* rules

1. Interpretation

In this Order —

"Director General" has the meaning given to that term by the RTA section 5;

"DPP" means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1991*;

"RTA" means the *Road Traffic Act 1974*.

2. Applications under RTA s. 76 and 78, how to be made

(1) An application under the RTA section 76(1) must be made by filing a Form No. 101 and any affidavit that the applicant proposes to tender at the hearing of the application.

(2) An application under the RTA section 76(7)(a) must be made by filing a Form No. 102 and any affidavit that the applicant proposes to tender at the hearing of the application.

(3) An application under the RTA section 76(7)(b) must be made by filing —

(a) a Form No. 103 and any affidavit that the applicant proposes to tender at the hearing of the application; and

(b) a copy of the record of the convictions of the holder of the extraordinary licence to which the application relates.

(4) An application under the RTA section 78 must be made by filing a Form No. 104 and any affidavit that the applicant proposes to tender at the hearing of the application.

(5) When a form and any affidavit is filed under this rule, 3 copies must also be filed.

3. Registrar's functions when application is made

(1) A Registrar may reject an application made under rule 2 if the Registrar has reason to believe that the application cannot be made to or heard by the Court under the RTA section 76 or 78.

(2) On accepting a Form No. 101, 103 or 104, a Registrar must —

(a) list the application for hearing on the earliest convenient date that is at least 14 clear days after the date on which the form is filed; and

(b) insert the hearing details on the form and its 3 copies; and

(c) return 3 copies of the form and any accompanying affidavit to the applicant.

(3) On accepting a Form No. 102, a Registrar must —

(a) list the application for hearing on the earliest convenient date; and

(b) insert the hearing details on the form and its 3 copies; and

(c) return 3 copies of the form and any accompanying affidavit to the applicant.

4. Applicant to serve application etc.

(1) On receiving the copies of a Form No. 101, 102 or 104 and any accompanying affidavit from a Registrar, the applicant must —

(a) serve one copy of the form and any accompanying affidavit on the Director General; and

(b) serve one copy of the form and any accompanying affidavit on the DPP.

(2) On receiving the copies of a Form No. 103 and any accompanying affidavit from a Registrar, the Director General must —

(a) serve one copy on the holder of the extraordinary licence to which the application relates; and

(b) serve one copy on the DPP.

5. Hearing of application, appearance at

(1) The Director General is entitled to be heard on an application made under the RTA section 76(1) or (7)(a) or 78.

(2) If the Court is satisfied that the Director General has been served with an application made under the RTA section 76(1) or (7)(a) or 78, the Court may deal with it in the absence of the Director General.

(3) The DPP is entitled to be heard on an application made under the RTA section 76 or 78.

(4) If the Court is satisfied that the DPP has been served with an application made under the RTA section 76 or 78, the Court may deal with it in the absence of the DPP.

(5) If the Court is satisfied that the holder of the extraordinary licence to which an application made under the RTA section 76(7)(b) relates has been served with it, the Court may deal with it in the absence of the holder.

6. Hearing of application, procedure on

(1) At the hearing of an application made under the RTA section 76(1) or (7)(a) or (b) —

(a) the applicant bears the onus of proof; and

(b) the standard of proof is on the balance of probabilities.

(2) At the hearing of an application made under the RTA section 76 or 78, affidavit evidence may be adduced by a party if the maker of the affidavit is present.

7. Result of hearing, Director General to be notified

As soon as practicable after the Court decides an application made under the RTA section 76 or 78, a Registrar must give the Director General notice of the decision including the details of any order made.

”.

(2) After Form 100 the following forms are inserted —

“

101. Application for extraordinary licence (O. 81C r. 2(1))

Road Traffic Act 1974 s. 76(1) Supreme Court of Western Australia No:		**Application for extraordinary licence**	
Applicant	Full name		
	Address		
	Date of birth		
	Occupation		
	Employment [Tick one box]	□ Self employed □ Not employed □ Employed by the employer below	
	Employer's name and address		
Details of disqualification from holding or obtaining a driver's licence	Date disqualified		
	Period disqualified		
	Reason[1]		
Application	Under the *Road Traffic Act 1974* s. 76(1) I apply for an order directing the Director General to issue an extraordinary licence that allows me to drive — • vehicles of class: • in these localities: • on these days at these times: • for these purposes:		
Grounds for this application[2]	1.		
Certificate by applicant [Tick one box]	A licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is not in force against me. □ I have not been refused an extraordinary licence by a court within the 6 months before the date of this application. □ I made a special application for an extraordinary licence that was refused by the [*name of*] Court on [*date*], but otherwise I have not been refused an extraordinary licence by a court within the 6 months before the date of this application.		
Signature of applicant		Date	
Hearing details	This application will be heard — on [*date*] at [*time*] or as soon after as possible, at [*place*]		

Notes to Form No. 101 —

1. If disqualified by a court after being convicted of an offence, state the court and the offence and, if the offence was against the *Road Traffic Act 1974* s. 63, 64, 67 or 67A, state whether the conviction was the applicant's first, second or subsequent for the offence. If disqualified for some other reason, give details.
2. State the hardship and inconvenience that would result if this application were refused. Note the *Road Traffic Act 1974* s. 76(3). Use numbered paragraphs.

102. Application by holder to vary extraordinary licence (O. 81C r. 2(2))

Road Traffic Act 1974 s. 76(7)(a) Supreme Court of Western Australia No:		**Application by holder to vary extraordinary licence**
Applicant	Full name	
	Address	
Extraordinary licence details	Court that ordered it	
	Date of court order	
	Licence's limitations and conditions	
Application [Tick one box]	I hold the above extraordinary licence. Under the *Road Traffic Act 1974* s. 76(7)(a) I apply for — ☐ An order that varies the above limitations and conditions by: ☐ An order that cancels the above limitations and conditions and substitutes these limitations and conditions:	
Grounds for this application[1]	1.	
Signature of applicant	Date	
Hearing details	This application will be heard — on [*date*] at [*time*] or as soon after as possible, at [*place*]	

Note to Form No. 102 —

1. Note the *Road Traffic Act 1974* s. 76(9)(a). Use numbered paragraphs.

103. Application by Director General to vary extraordinary licence (O. 81C r. 2(3))

Road Traffic Act 1974 s. 76(7)(b) Supreme Court of Western Australia No:		**Application by Director General to vary extraordinary licence**
Extraordinary licence details	Holder's name	
	Holder's address	
	Court that ordered it	
	Date of court order	
	Licence's limitations and conditions	
Application [Tick one box]	Under the *Road Traffic Act 1974* s. 76(7)(b) the Director General applies for — ☐ An order that varies the above limitations and conditions by: ☐ An order that cancels the above limitations and conditions and substitutes these limitations and conditions: ☐ An order that cancels the above extraordinary licence.	
Grounds for this application[1]	1.	
Signature of applicant	for Director General Date	
Hearing details	This application will be heard — on [*date*] at [*time*] or as soon after as possible, at [*place*]	

Note to Form No. 103 —

1. Note the *Road Traffic Act 1974* s. 76(9). Use numbered paragraphs.

104. Application for removal of disqualification (O. 81C r. 2(4))

Road Traffic Act 1974 s. 78 Supreme Court of Western Australia No:		**Application for removal of disqualification**		
Applicant	Full name			
	Address			
	Date of birth			
	Occupation			
Details of order disqualifying applicant from holding or obtaining a driver's licence	Court that made the order			
	Date of order			
	Period disqualified			
	Reason[1]			
Application	Under the *Road Traffic Act 1974* s. 78, I apply for an order removing the above disqualification.			
Grounds for this application[2]	1.			
Certificate by applicant	An application made under the *Road Traffic Act 1974* s. 78 in respect of the above disqualification has not been refused in the year preceding the date of this application.			
Signature of applicant		Date		
Hearing details	This application will be heard — on [*date*] at [*time*] or as soon after as possible, at [*place*]			

Notes to Form No. 104 —

1. State the offence(s) for which the applicant was disqualified and, if the offence was against the *Road Traffic Act 1974* s. 63, 64, 67 or 67A, state whether the conviction was the applicant's first, second or subsequent for the offence. If disqualified for some other reason, give details.
2. Note the *Road Traffic Act 1974* s. 78(5). Use numbered paragraphs.

".

51. Order 81D amended

(1) After Order 81D rule 2 the following rule is inserted —

"

2A. Appeals under s. 38(2) and applications for leave to appeal

(1) In this rule —

"appeal" means —

(a) an appeal under section 38(2) on any question of law arising out of an award; or

(b) an application under section 38(4)(b) for leave to bring such an appeal.

(2) Subject to this rule, Order 65, except rules 9, 11 and 19, applies with any necessary changes to and in respect of an appeal.

(3) For the purposes of subrule (2), Order 65 is to be read as if any reference in it to the primary court were a reference to the arbitrator or umpire who made the award.

(4) An appeal must be commenced within 21 days after the material date, as that term is defined in rule 5(1), or such longer period as the Court may allow.

(5) When commencing an appeal, the documents referred to in Order 65 rule 9(1)(e), (f) and (g) must not be filed with the appeal notice.

(6) Within 21 days after the appeal notice is filed, the appellant must take out a summons for directions about the following —

(a) whether the application for leave to appeal, if any, will be heard with the appeal or separately;

(b) the documents and other things that will be required for the hearing of appeal;

(c) any proposed amendments to the grounds of appeal;

(d) the filing of a statement of agreed facts;

(e) the filing and serving of written submissions;

(f) the documents to be included in papers for the judge;

(g) any other matter relevant to hearing and determining the appeal.

(7) The appellant must serve the summons for directions, with a minute of the proposed directions —

(a) on the other parties to the arbitration agreement; and

(b) on the arbitrator or umpire who made the award.

(8) If a summons for directions is not taken out under subrule (6), the appeal is to be taken to have been discontinued, unless the Court orders otherwise.

(9) After the summons for directions is dealt with, a Registrar must request the arbitrator or umpire to forward to the Registrar such documents or things that are required for the hearing of appeal.

".

(2) Order 81D rule 3(2) is repealed.

(3) Order 81D rule 5(2)(a) is deleted.

(4) Order 81D rule 5(3) is repealed.

(5) Order 81D rule 7 is amended by deleting "Rules 12 to 19, inclusive, of Order 36 apply" and inserting instead —

" Order 36B applies ".

(6) Order 81D rule 10 is repealed.

52. Order 81F replaced

Order 81F is repealed and the following Order is inserted instead —

"

Order 81F — *Proceeds of Crime Act 2002* (Commonwealth) rules

1. Interpretation

(1) In this Order, unless the contrary intention appears —

"Act" means the *Proceeds of Crime Act 2002* of the Commonwealth;

"section" means a section of the Act.

(2) If a term used in this Order is defined in the Act, it has the same meaning in this Order as it has in the Act, unless the contrary intention appears.

2. Applications under the Act, making of

(1) Any application that may be made under the Act must be made in accordance with this rule.

(2) This rule is subject to and does not affect the operation of section 17, 18, 19, 20, 26, 61, 136 or 163.

(3) An application that initiates proceedings in the Court in relation to a suspect or particular property —

(a) must be made —

(i) by notice of motion (Form No. 65) if no notice of the application is required to be given; or

(ii) otherwise by originating summons (Form No. 74);

and

(b) must be titled: In the matter of the *Proceeds of Crime Act 2002* (Cwlth) and [*name of the suspect concerned, or name of the owner of or a description of the property concerned*]; and

(c) must call the person making the application the 'applicant'; and

(d) must call the person against whom the proceedings are initiated the 'respondent'.

(4) An application in proceedings under the Act that have been initiated under subrule (3) —

(a) must be made by summons (Form No. 77); and

(b) must call the person making the application the 'applicant'; and

(c) must call the person entitled to respond to the application the 'respondent'.

(5) Unless the Court orders otherwise —

(a) an application for an order under the Act must be accompanied by an affidavit that states the facts and circumstances on which the application is based; and

(b) the application and the affidavit must be filed and served on the person against whom the order is sought.

(6) Subrule (5) does not apply to —

(a) an application under section 17, 18, 19 or 20 for a restraining order; or

(b) an application under section 48 for a forfeiture order; or

(c) an application under section 116 for a pecuniary penalty order; or

(d) an application under section 152 for a literary proceeds order,

against a person if the application is made at the time the person is convicted.

(7) Subrule (5) does not apply to an application for an order under the Act that is filed together with the written consent to the making of the order of every person whose consent the Court needs in order to make the order by consent.

(8) If under the Act a person applying for an order or exclusion is required to give written notice to the DPP of the grounds on which the order or exclusion is sought, the person must file a copy of the grounds with the application for the order or exclusion.

3. Service on the DPP (Cwlth) in Perth

Service of an application under the Act and any document required to accompany the application on the DPP is effected if the application and document are served on the DPP's office in Perth.

4. DPP to file grounds for contesting application

If under the Act the DPP is required to give a person applying for an order or exclusion notice of any grounds on which the DPP intends to contest the application, the DPP must file a copy of the grounds at least 5 clear days before the date set for the hearing of the application.

5. Summons for directions

(1) If an application under the Act is made by originating summons, the applicant must apply by summons to the Court for directions within 7 days after the time limited for appearance.

(2) If the applicant does not comply with subrule (1), a respondent may apply to the Court for directions.

6. Court may give directions at any time

On the hearing of a summons for directions, or on any other application, or on its own initiative at any time, the Court may —

(a) inquire as to the persons who may be affected by the relief claimed and for the purpose of that inquiry direct any party to supply any information which the Court may require;

(b) give directions as to the persons to be added as parties as being interested in the relief claimed or to represent classes of persons so interested;

(c) direct that notice of the application be served on any person;

(d) give any other directions or make any other orders as may be necessary for the just and expeditious disposal of the proceedings.

6. Representative respondent

If a person is added as a respondent and other persons have the same or a similar interest as that respondent, the Court may order that —

(a) that respondent be authorised to defend the proceedings on behalf of or for the benefit of all persons so interested; and

(b) all persons so interested shall be bound by any order made in the proceedings.

7. Evidence on applications

Evidence in support of or opposing an application for an order under the Act is to be by affidavit unless the Court orders otherwise.

8. Court may order separate hearing

If after proceedings are initiated under the Act an application is made in the proceedings, the Court may on application, or on its own initiative at any time, order that the application be heard and determined separately.

".

53. Order 82 amended

(1) Order 82 rules 1 to 6 are repealed.

(2) Order 82 rule 8 is repealed.

(3) Order 82 rule 10 is repealed.

(4) Order 82 rule 11 is amended as follows:

(a) by deleting "execution or";

(b) by deleting "except poundage".

(5) Order 82 rule 12 is repealed.

(6) Order 82 rule 13 is repealed.

(7) Order 82 rule 14 is amended by deleting "item 32 of Schedule 1 of the *Supreme Court (Fees) Regulations 2001*" and inserting instead —

"

Schedule 2 to the *Supreme Court (Fees) Regulations 2002*

".

(8) Order 82 rule 15 is repealed.

(9) Order 82 rule 16 is amended by deleting "execution or".

54. Order 84 amended

(1) After Order 84 rule 7 the following rule is inserted —

"

8. Interest and apportionment, certification of

The Court may order the calculation of interest, or the apportionment of a fund, to be certified by a Registrar and to be acted upon by the Accountant or any other person without further order.

".

(2) Order 84 rule 9(1) is amended by deleting "*Admiralty Act 1890*" and inserting instead —

" *Admiralty Act 1988* ".

55. First Schedule repealed

The First Schedule is repealed.

56. Second Schedule amended

(1) Form 1 is amended by deleting the 3 passages that begin with "This writ was issued" and inserting instead —

"

This writ was issued by or on behalf of the plaintiff.

The plaintiff's geographical address is:

The plaintiff's service details are:

".

(2) Forms 13, 14, 16 and 44 are deleted.

(3) Form 64 is amended as follows:

(a) by deleting "[Court of Appeal of the] Supreme Court" and inserting instead —

" Supreme Court [*or* Court of Appeal] ";

(b) by deleting "[before His Honour Mr. Justice]".

(4) Form 67 is amended by deleting "a [describe court] [or as the case may be]." and inserting instead —

" [*name of a court or an office*]. ".

(5) Form 71 is amended as follows:

(a) by deleting "the [describe officer to whom the order is directed]" and inserting instead —

" [*describe the officer and the Court*] ";

(b) by deleting "C.D.".

57. Third Schedule amended

The Third Schedule clause 1 is repealed.

58. Fourth Schedule repealed

The Fourth Schedule is repealed.

Dated: 16 February 2007.

Judges' signatures:

Chief Justice Wayne Martin
Justice Michael Murray
Justice Neville Owen
Justice Christopher Steytler
Justice Anthony Templeman
Justice Christine Wheeler
Justice Geoffrey Miller
Justice Nicholas Hasluck AM
Justice Leonard Roberts-Smith
Justice Carmel McLure
Justice Christopher Pullin
Justice Eric Heenan
Justice Michael Barker
Justice Narelle Johnson
Justice Rene Le Miere
Justice Lindy Jenkins
Justice Ralph Simmonds
Justice Peter Blaxell
Justice Michael Buss