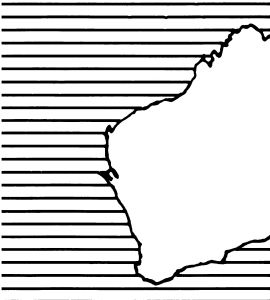




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SUPREME COURT ACT 1935



**SUPREME COURT AMENDMENT
RULES 2010**

Western Australia

Supreme Court Amendment Rules 2010

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Supreme Court Act 1935

Supreme Court Amendment Rules 2010

Made by the Judges of the Supreme Court.

Part 1 — Preliminary

1. Citation

These rules are the *Supreme Court Amendment Rules 2010*.

2. Commencement

These rules come into operation as follows —

- (a) Part 1 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. Rules amended

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

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Part 2 — Amendments about case management**4. Order 1 amended**

- (1) In Order 1 rule 4(1) insert in alphabetical order:

case has the meaning given in Order 4A rule 1;

case manager has the meaning given in Order 4A rule 1;

working day means a day other than a Saturday, a Sunday, or a public holiday throughout the State;

- (2) In Order 1 rule 4B(1):

- (a) in paragraph (d) delete “business at a cost affordable by parties.” and insert:

business; and

- (b) after paragraph (d) insert:

- (e) ensuring the procedure applicable, and the costs of the procedure to the parties and the State, are proportionate to the value, importance and complexity of the subject matter in dispute; and

- (f) that the procedure applicable, and the costs of the procedure to the parties, are proportionate to the financial position of each party.

- (c) after each of paragraphs (a) and (b) insert:

and

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5. Order 4A inserted

After Order 3 insert:

Order 4A — Case management

Division 1 — Preliminary matters

1. Terms used

In this Order, unless the contrary intention appears —

approved mediator means a registrar or other person, approved as a mediator by the Chief Justice;

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

case management direction has the meaning given in rule 2;

case manager means —

- (a) for a case on the CMC list, the CMC List judge to whom the case is assigned;
- (b) for any other case, a master or a Case Management Registrar;

CMC List means the Commercial and Managed Cases List referred to in Division 3;

CMC List case means a case that is on the CMC List;

CMC List judge means a judge who the Chief Justice has appointed to deal with CMC List cases;

enforcement order has the meaning given in rule 3.

2. Term used: case management direction

- (1) A case management direction is any procedural direction that in the Court's opinion it is just to make in

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a case to facilitate the attainment of the objects referred to in Order 1 rule 4B(1).

- (2) Without limiting subrule (1), a case management direction may do one or more of the following —
- (a) give directions to assist the convenience of the parties or witnesses;
 - (b) direct the parties to comply with a timetable for procedural steps that are needed in the case;
 - (c) dispense with all or any or any further pleadings;
 - (d) direct specified pleadings to be filed;
 - (e) dispense with any interlocutory step;
 - (f) direct that an interlocutory application not be heard;
 - (g) as to any interlocutory matter —
 - (i) direct the parties or their practitioners to file and exchange memoranda before the hearing of it in order to clarify the matters in issue before the hearing;
 - (ii) direct that it be dealt with by telephone, video link or other similar means of communication;
 - (iii) give directions as to the use of audio-visual equipment, computers and other equipment in any hearing of it;
 - (iv) direct that it be dealt with, and any evidence in relation to it be provided, by email, fax, telegram, telex, courier, post or other similar means;
 - (v) give directions for the speedier and more effective recording of evidence at any hearing of it;

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-
- (h) direct that an application for an adjournment of any proceeding be supported by affidavits of specified people;
 - (i) limit discovery or direct that discovery be given in stages;
 - (j) direct any or all of the parties to confer on a “without prejudice” basis for the purpose of identifying, resolving and narrowing the points of difference between them;
 - (k) direct that experts, whose reports have been exchanged under Order 36A, confer on a “without prejudice” basis for the purpose of identifying, resolving and narrowing the points of difference between them;
 - (l) if under paragraph (j) or (k) a conference is directed to be held —
 - (i) subject to subrule (5) and rule 8, direct that it be conducted by a mediator;
 - (ii) direct that it be held by telephone, video link or other similar means of communication;
 - (iii) set the terms or conditions for it and deal with anything in relation to it;
 - (m) direct that a certificate of readiness is not required for the purposes of Order 33 or Order 58 rule 19;
 - (n) direct a party (*A*) intending to produce a plan, photograph, model or other object (the *object*) at trial to serve on the other party (*B*), at a time specified, a written notice —
 - (i) describing the object; and
 - (ii) stating where and when it may be inspected; and

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- (iii) requiring B to serve A, within 7 days after the date on which the notice is served, a written notice agreeing or refusing to agree to the admission in evidence of the object without further proof of it;
- (o) direct a practitioner for a party to give the party a memorandum stating —
 - (i) the approximate solicitor and client costs and disbursements of the party to the date of the memorandum; and
 - (ii) the estimated future solicitor and client costs and disbursements of the party to but not including the trial; and
 - (iii) the estimated length of the trial and the estimated solicitor and client costs and disbursements of the trial; and
 - (iv) the estimated party and party costs that would be payable by the party if the party were unsuccessful at trial;
- (p) set a timetable for the trial of the case including a timetable that includes any limit that could be directed under Order 34 rule 5A(1);
- (q) limit the length of written submissions that can be made in the case;
- (r) direct the parties to prepare bundles, files or folders of documents for use at the trial of the case, either —
 - (i) grouped according to topic, class, category, allegation in issue or otherwise; or
 - (ii) in an order or sequence,

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-
- as specified in the direction, and identified or indexed as specified in the direction;
- (s) direct a party to serve on the other parties, at times set by the case manager making the direction, a signed written statement of the proposed evidence in chief of each witness to be called by that party;
 - (t) direct that a signed written statement referred to in paragraph (s) or any part of it stand as the evidence in chief of the witness;
 - (u) change the venue of the trial, or adjourn the trial part heard to continue at a different venue;
 - (v) in exceptional circumstances, direct that an application made by a party under this Order operate as a stay of proceedings;
 - (w) in exceptional circumstances or if not to do so would frustrate the appeal, direct that an appeal against a decision made under this Order by a Case Management Registrar operate as a stay of proceedings;
 - (x) give directions as to the manner in which the parties are to defray the costs of giving effect to any case management direction;
 - (y) direct that a specified case management direction be complied with by a set date;
 - (z) direct that a referee give the Court a report on any question or issue of fact.
- (3) A case management direction may —
- (a) include any ancillary direction that is needed for the purpose of the direction; and
 - (b) amend or cancel another case management direction.

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- (4) A registrar cannot make a case management direction —
- (a) under subrule (2)(z); or
 - (b) under subrule (3)(b) that amends or cancels a case management direction made by a judge or master.
- (5) A case management direction must not, without the consent of the parties, direct that a conference take place where a party would become liable to remunerate a mediator.

3. Term used: enforcement order

An enforcement order is —

- (a) an order as to the payment of costs;
- (b) an order as to the payment of costs of the parties on an indemnity basis, to be fixed in a manner specified in the order, and payable within 14 days after the date of the order;
- (c) a self-executing order for judgment, striking out pleadings or otherwise;
- (d) an order under Order 66 rule 5.

4. Inconsistencies with other rules

If a provision in this Order is inconsistent with these Rules or the *Supreme Court (Corporations) (WA) Rules 2004*, the provision in this Order prevails.

Division 2 — Provisions applicable to all cases**5. Court may review a case at any time**

- (1) The case manager for a CMC List case or, in any other case, a judge, master or registrar —
- (a) at any time in the case, on his or her own initiative after notifying the parties; or

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- (b) when hearing a summons for directions or any other application in the case,

may review the progress of the case and may do any or all of the following —

- (c) make any interlocutory order the Court considers just;
 - (d) make any case management direction the Court considers just;
 - (e) make any enforcement order the Court considers just.
- (2) For the purposes of subrule (1)(a), a judge, master or registrar may at any time require any or all of the parties to a case to attend before him or her.

6. Timetables

- (1) This rule applies if the Court directs the parties to a case to comply with a timetable for procedural steps that are needed in the case.
- (2) The judge, master or registrar making the direction must set the timetable.
- (3) The judge, master or registrar making the direction or the case manager for the case may do any or all of the following —
 - (a) amend the timetable, whether on his or her own initiative or on a party's application;
 - (b) at any time request the parties to explain in writing why the timetable has not been complied with;
 - (c) at any time summons the parties to explain why the timetable has not been complied with;
 - (d) for the purposes of hearing a summons issued under paragraph (c), direct the parties to file

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such affidavits in response to the summons at such times as he or she considers just;

- (e) on the return of a summons issued under paragraph (c) —
 - (i) amend the timetable;
 - (ii) make any case management direction he or she considers just;
 - (iii) make any enforcement order he or she considers just;
 - (f) if a party does not comply with the timetable, or obey a summons issued under paragraph (c), or file affidavits as directed, make any case management direction or enforcement order he or she considers just.
- (4) If a request is made under subrule (3)(b), the parties and their practitioners must —
- (a) give the Court the information required within the time specified in the request; and
 - (b) serve the information on each other party.

7. Who has to attend conferences

- (1) This rule applies if a conference, other than a listing conference or a conference between experts, is required or directed under this Order to be held.
- (2) Each party to the case and the practitioner, if any, representing each party must attend the conference, unless ordered otherwise.
- (3) If a party is not a natural person, a representative of the party familiar with the substance of the case and with authority to compromise it must attend the conference.

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- (4) If there is no practitioner on the record for a party that is a body corporate, the case manager presiding at the conference may permit a person who is not a practitioner to represent the party.

8. Conferences of the parties with a mediator

- (1) This rule applies if the Court directs the parties to a case to attend a conference conducted by a mediator.
- (2) The Court must direct whether the mediator is to be an approved mediator or some other person.
- (3) The Court must not direct that the mediator is to be a person who is not an approved mediator unless the parties consent.
- (4) In the absence of any other order made by the Court —
- (a) the conference must take place at the time and place directed; and
 - (b) if the Court does not set a date for the conference, each party must, subject to any directions, take the steps necessary to ensure the conference takes place as soon as possible; and
 - (c) each party's costs of and incidental to the conference shall be the party's costs in the cause, unless it is ordered otherwise or the parties agree; but a party may apply for those costs if they have been unnecessarily incurred due to the conduct of the other party; and
 - (d) the fees and expenses of any mediator who is not a registrar must be paid by the parties in equal shares, unless it is ordered otherwise or the parties agree; and

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- (e) within 2 weeks after the conclusion of the conference, the plaintiff must file a report, signed by or on behalf of each party —
 - (i) confirming that the conference has taken place as directed; and
 - (ii) recording the substance of any resolution or narrowing of the points of difference between the parties resulting from the conference.
- (5) The mediator —
 - (a) must not, unless the parties agree, report to the Court on the conference; but
 - (b) whether or not the parties agree, may report to the Court on any failure by a party to cooperate in the conference.
- (6) A report given under subrule (5)(b) must not be disclosed to the trial judge except for the purposes of determining any question as to costs.

9. Referees

- (1) This rule applies if the Court directs that a referee give the Court a report on any question or issue of fact.
- (2) The judge, master or registrar making the direction or the case manager for the case may do any or all of the following —
 - (a) appoint the referee;
 - (b) give the referee instructions about the question or issue of fact referred and the report required;
 - (c) give directions with respect to the conduct of proceedings before the referee;
 - (d) give directions for the provision —
 - (i) of services of officers of the Court;

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- (ii) of courtrooms and other facilities,
for the purpose of the referee;
 - (e) vary or cancel a direction given under this
subrule.
- (3) The judge, master or registrar making the direction or
the case manager for the case may —
 - (a) determine the amount of the fees to be paid to
the referee; and
 - (b) direct how, when and by whom the whole or
any part of the fees referred to in paragraph (a)
are to be paid.
- (4) Evidence before the referee —
 - (a) may be given orally or in writing; and
 - (b) must, if the referee so requires, be given on
oath or affirmation.
- (5) Evidence additional to the evidence taken before the
referee cannot be adduced before the Court except with
the leave of the Court.

Division 3 — Cases on the CMC List

10. Application of this Division

This Division applies to every CMC List case unless
and to the extent it is ordered otherwise by a CMC List
judge.

11. Cases on the CMC List

These cases are on the CMC List —

- (a) any case in which defamation is alleged;
- (b) any case that is ordered to be on the list under
rule 13;

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- (c) any case on the CMC List, as established administratively by the court, immediately before the *Supreme Court Amendment Rules 2010* rule 5 comes into operation.

12. Headings to documents

The heading of every document filed or issued in a CMC List case must include “Commercial and Managed Cases List” under “In the Supreme Court of Western Australia”.

13. CMC List judge may order case to be on or taken off CMC List

- (1) Only a CMC List judge can order that a case be admitted to or taken off the CMC List.
- (2) A CMC List judge, on his or her own initiative or on a request made under rule 14, may order a case to be admitted to the CMC List.
- (3) A CMC List judge, on his or her own initiative or on an application by a party, may order a CMC List case to be taken off the list.

14. Asking for a case to be put on the CMC List

- (1) A party to a case may ask for an order that the case be admitted to the CMC List.
- (2) The request should ordinarily be made as soon as possible after the case is commenced and each party who is required to enter an appearance has done so.
- (3) The request must be made —
 - (a) by filing a letter, addressed to the Central Office, containing —
 - (i) the request; and

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- (ii) the email address (if any) of each party to the case, other than a party who is required to enter an appearance and has not;
 - and
 - (b) serving a copy of the letter on each other party to the case, other than a party who is required to enter an appearance and has not.
- (4) The email addresses in the letter must comply with Order 71A rule 3.
 - (5) A request made under this rule must be decided by a CMC List judge.
 - (6) At the hearing of the request, the CMC List judge, if satisfied the case should be subject to this Division, may order the case be admitted to the CMC List unless a party shows cause why it should not be admitted.

15. Interlocutory hearings

- (1) The case manager of a CMC List case may hear any interlocutory matter relating to the case, or may refer the matter to another judge or master for hearing who has and may exercise all powers of the case manager.
- (2) A party to a CMC List case who is represented by a practitioner need not attend an interlocutory hearing in the case unless subpoenaed or ordered to do so by the case manager.

Division 4 — Cases not on the CMC List

16. Application of this Division

This Division applies to every case that is not on the CMC List unless and to the extent it is ordered otherwise by a judge or master.

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17. Requesting interlocutory orders and case management directions

- (1) A party to a case may at any time ask a case manager for any or all of the following —
 - (a) for any interlocutory order that the case manager has jurisdiction to make;
 - (b) for a case management direction to be made under this Order;
 - (c) to have a case management direction amended or cancelled.
- (2) The request must be made by giving a letter that details the order or direction wanted to the associate to the case manager, or if the case manager is not known, the Principal Registrar.
- (3) A case manager, on receipt of the request —
 - (a) if the manager has jurisdiction to make the order or direction —
 - (i) may deal with the request without requiring the parties to attend a hearing;
or
 - (ii) may deal with the request at any conference required by this Order or at the hearing of any other matter in the case and for that purpose may relist such a conference or matter;
 - or
 - (b) otherwise, may refer the request to a judge or master who has jurisdiction to make the order or direction.

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18. Status conference

- (1) A case manager shall summons all parties to a case to attend a status conference before a case manager.
- (2) The status conference must be held within 21 days after the first appearance is entered in the case or at a later time decided by a case manager.
- (3) If within 6 months after a case is commenced an affidavit of service of the writ, originating motion or originating summons has been filed but no appearance has been entered in the case, a case manager may summons the plaintiff to a status conference.
- (4) The status conference shall be held even if, at the time of the conference, not all parties to the case have been served with the originating process or have entered appearances.
- (5) At the status conference the case manager is to review the documents on the Court file and inquire into these matters —
 - (a) whether pleadings or any specified pleadings are necessary;
 - (b) the state of the pleadings and whether the times prescribed by these Rules for pleadings are being complied with and if not, why;
 - (c) whether any party intends to commence third party or similar proceedings under Order 19;
 - (d) whether any party intends to require discovery and inspection under Order 26;
 - (e) whether any party intends to interrogate under Order 27;
 - (f) whether a conference of the parties with a mediator is needed and if so, when;
 - (g) the likely length of the trial;

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- (h) any other matter relevant to ensuring the case is managed in accordance with Order 1 rule 4B.
- (6) At the status conference the case manager may at the request of a party or the parties or on the manager's own initiative —
 - (a) make any interlocutory order the manager considers just;
 - (b) make any case management direction the manager considers just;
 - (c) make any enforcement order the manager considers just;
 - (d) make an order that rule 19 does not apply to the case.
- (7) A case manager may adjourn the status conference from time to time.

19. Case evaluation conference

- (1) Unless ordered otherwise under rule 18(6)(d), a case manager must summons all parties to a case to attend a case evaluation conference before a case manager.
- (2) The case evaluation conference shall be held within 28 weeks after the initial appearance to the summons to the status conference or at a later time decided by a case manager.
- (3) The case evaluation conference shall be held even if, at the time of the conference, not all parties to the case have been served with the originating process or have entered appearances.
- (4) At the case evaluation conference the case manager is to review the documents on the Court file and inquire into these matters —
 - (a) the state of the pleadings and if they are not closed, why;

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- (b) whether a conference of the parties with a mediator is needed and if so, when;
 - (c) the content of any reports by experts that have been or may be exchanged under Order 36A and whether a conference between them is needed;
 - (d) whether the case, at the time of the listing conference, will be ready for trial and if not, why;
 - (e) whether the estimated length of the trial is still accurate;
 - (f) the number of witnesses to be called at the trial, whether there are any known difficulties as to the availability of any witness, and the estimated time it will take for them to give their evidence;
 - (g) the administrative resources likely to be needed for the trial.
- (5) At the case evaluation conference the case manager may at the request of a party or the parties or on the manager's own initiative do any or all of the following —
- (a) make any interlocutory order the manager considers just;
 - (b) make any case management direction the manager considers just;
 - (c) make any enforcement order the manager considers just.
- (6) A case manager may adjourn the case evaluation conference from time to time; but not to a date on or after the date of the listing conference.

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20. Listing conference

- (1) A listing conference shall be held before a judge in chambers.
- (2) The listing conference shall be held as soon as practicable after the case is entered for trial or, in the case of an originating summons, after an application is made for an appointment for the attendance of the parties for the hearing of the summons.
- (3) At the listing conference the judge may review the documents on the Court file and inquire into these matters —
 - (a) whether the case can be settled;
 - (b) which documents will be admitted at trial by consent;
 - (c) the number of witnesses to be called at the trial, whether there are any known difficulties as to the availability of any witness, and the estimated time it will take for them to give their evidence in chief;
 - (d) whether the case in all respects is ready to go to trial.
- (4) At the listing conference the judge may do any or all of the following —
 - (a) make any case management direction the judge considers just;
 - (b) amend or cancel any case management direction made previously;
 - (c) if the judge considers it is convenient to do so to facilitate the preparation for, or the conduct of, the trial, or is otherwise desirable —
 - (i) after giving notice to the parties, determine any question of law; or

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- (ii) determine any question of procedure.
- (5) The judge may adjourn the listing conference from time to time.
- (6) At the listing conference the judge may fix the date of the trial of the case and the length of the trial.

Division 5 — Inactive Cases List

21. Term used: Inactive Cases List

In this Division —

Inactive Cases List means a list of inactive cases kept by the Principal Registrar under rule 25.

22. Case manager may issue summons to show cause

- (1) The case manager of a case may at any time summons the parties to attend a hearing before a case manager 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 the case manager 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.

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

- (1) A judge, master or registrar making an interlocutory order or case management direction in a case may include an order that unless the interlocutory order or direction 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.

24. Cases inactive for 12 months deemed inactive

If no procedural step is taken in a case for 12 months by any party to the case, the case is taken to be inactive unless the case manager for the case orders otherwise.

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

- (1) When an order is made under rule 22(4), or an order made under rule 23(1) takes effect, or a case is taken to be inactive under rule 24, 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 and of the effect of rule 26.
- (2) As soon as practicable after being notified under subrule (1), the practitioner for a party to the case must notify the party of —
 - (a) the fact that the case is on the Inactive Cases List and why; and
 - (b) the effect of rule 26.

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26. Consequences of a case being on Inactive Cases List

If a case is on the Inactive Cases List, no document in relation to the case, other than a summons for an order under rule 27(1), can be filed in the Court.

27. Removing cases from Inactive Cases List

- (1) Any party to a case on the Inactive Cases List may apply to the Court for an order that the case be taken off the Inactive Cases List.
- (2) The Court may order a case be taken off the Inactive Cases List if satisfied the case will be conducted in a timely way or for any other good reason.
- (3) An order that a case be taken off the Inactive Cases List may include any conditions necessary to ensure the case is conducted in a timely way.

28. Certain inactive cases to be taken to have been dismissed

- (1) A case that is on the Inactive Cases List for 6 continuous months is taken to have been dismissed for want of prosecution.
- (2) If no procedural step (except an application to dismiss the case for want of prosecution) is taken in the 6 months after the date on which a case is ordered to be taken off the Inactive Cases List, the case is taken to have been dismissed for want of prosecution.
- (3) If under subrule (1) or (2) a case is dismissed, the Principal Registrar must give all parties to the case written notice of the fact.

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6. Order 20 amended

In Order 20 rule 3(1) delete “24 hours after” and insert:

one working day after the date of

7. Order 21 amended

(1) In Order 21 rule 1(1) delete “closed.” and insert:

closed by filing its amended writ before the closure.

(2) Delete Order 21 rule 1(2).

(3) In Order 21 rule 1(3)(c) delete “Rule 3(1)” and insert:

rule 3,

(4) Delete Order 21 rules 3 and 4 and insert:

3. Amendment of pleadings without leave

(1) A party may amend any of its pleadings, without the leave of the Court, by filing its amended pleading not later than 7 weeks before the date fixed for the start of the trial of the case.

(2) A party served with a pleading amended under subrule (1) may make any amendment needed to any of its pleadings as a consequence of the amended pleading, without the leave of the Court, by filing its amended pleading within 10 working days after the date on which it is served with the amended pleading.

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- (3) A party served with a pleading amended under subrule (1) or (2) may apply to the case manager for any amendment in the pleading to be struck out.
 - (4) A party's application under subrule (3) must be made within 7 working days after the date on which the party is served with the amended pleading.
 - (5) If, on an application made under subrule (3), the case manager is satisfied that, had an application for leave to make the amendment in question been made under rule 5 at the date when the amended pleading was filed under this rule, leave to make the amendment or part of the amendment would have been refused, the manager must order the amendment or that part of it to be struck out.
 - (6) An order made on an application under this rule may be made on such terms as to costs as the case manager considers just.
- (5) In Order 21 rule 8 delete "amend the document in accordance with the order" and insert:
- file the document, amended in accordance with the order,
- (6) Delete Order 21 rule 9(4).
 - (7) After Order 21 rule 10 insert:

11. Service of amended documents

An amended writ, pleading or other document that is filed under this Order must be served on each other

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party within one working day after it is filed unless the Court orders otherwise.

8. Order 29 replaced

Delete Order 29 and insert:

Order 29 — Directions**1. Summons for directions**

- (1) Any party in a cause or matter may apply for directions —
 - (a) at any time before entry for trial; or
 - (b) with the leave of the Court, after entry for trial.
- (2) If the defendant in a cause or matter is required to appear in the proceedings, an application for directions cannot be made before the defendant has entered an appearance.
- (3) An application for directions must —
 - (a) be made by summons; and
 - (b) specify the directions or orders sought.
- (4) So far as practicable, a party applying for directions must apply for any direction or order the party thinks is necessary in relation to any matter capable of being dealt with on an interlocutory application in the cause or matter.
- (5) An application for directions must not apply for directions that amend or cancel or are inconsistent with a case management direction made under Order 4A.
- (6) A party applying for directions must give each other party 2 clear days' notice specifying any directions and

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orders which differ from the directions or orders sought in the application.

- (7) An application made under this rule is called a summons for directions.

2. Directions hearings

- (1) At the hearing of a summons for directions, the parties and their advisers must give such information and produce such documents as the Court may reasonably require, unless the information or documents are subject to privilege.
- (2) The Court shall adjourn the hearing from time to time until the conclusion of the cause or matter.
- (3) At any time after the hearing of a summons for directions is adjourned and before judgment, a party may ask for the hearing to be relisted and —
- (a) for any direction or order capable of being made on an interlocutory application;
 - (b) for a case management direction to be made under Order 4A;
 - (c) to have a case management direction made under Order 4A amended or cancelled.
- (4) The request must be made by giving a letter that —
- (a) asks for the hearing to be relisted; and
 - (b) details the direction or order sought,
- to the associate to the case manager of the case or, if the case manager is not known, the Principal Registrar.

9. Order 29A deleted

Delete Order 29A.

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10. Order 31A deleted

Delete Order 31A.

11. Consequential amendments

- (1) Delete Order 20 rule 21(3) and insert:
 - (3) If the Court makes an order under subrule (2), it must, and if it dismisses an application for such an order, it may, make such case management directions under Order 4A as to the further conduct of the action as it considers just.
- (2) In Order 33 rule 8B(1):
 - (a) delete “Subject to paragraph (2) after” and insert:

After
 - (b) delete “nominee.” and insert:

nominee unless the cause, matter or issue is on the CMC List under Order 4A, in which case the application must only be made to the case manager of the cause, matter or issue.
- (3) Delete Order 33 rule 8B(2).
- (4) Delete Order 43 rule 16(1) and insert:
 - (1) The parties to proceedings or their practitioners may file a written consent to the making of an order in those proceedings, other than an order that amends, cancels

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or is inconsistent with an interlocutory order made by a case manager under Order 4A.

(5) Delete Order 59 rule 3(2) and insert:

(2) An application to a Case Management Registrar in chambers under Order 4A shall be made in accordance with Order 4A rule 17.

(6) In Order 60A rule 2(1) delete “In relation to a case to which Order 29A applies,” and insert:

For the purposes of Order 4A Division 4,

(7) In Order 60A rule 3(1) delete “Rule 4”.

(8) In Order 60A rule 3(2):

(a) in paragraph (a) delete “Order 29A Rule 12; or” and insert:

Order 4A rule 17; or

(b) in paragraph (b) delete “Order 29A,” and insert:

Order 4A,

(9) In Order 60A rule 4(5):

(a) in paragraph (a) delete “Order 29A;” and insert:

Order 4A;

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(b) in paragraph (c) delete “Order 29A” and insert:

Order 4A

(10) Delete Order 72 rule 5A(1).

(11) In Order 75 rule 5 delete “Order 29A rule 6” and insert:

Order 4A rule 18

(12) In the Second Schedule delete Form No. 18A.

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**Part 3 — Amendments about discovery and
interrogatories**

12. Order 26 amended

- (1) After Order 26 rule 1A insert:

1B. Documents not wholly discoverable

- (1) If under this Order a party in a cause or matter is required to give discovery of a document —
- (a) the party must discover the document even if it contains —
 - (i) information that is not related to a matter in question in the cause or matter; or
 - (ii) information that the party objects to producing,as well as information relating to a matter in question in the cause or matter that the party may be required to produce; but
 - (b) if the party has possession, custody or power of the document, the party may edit the document to hide the information referred to in paragraph (a)(i) and (ii).
- (2) If a party edits a document under subrule (1), the party must do the following —
- (a) in Part 1B of its list of documents (Form No. 17) —
 - (i) list the document; and
 - (ii) identify the document as one that contains hidden information; and
 - (iii) state why the information is hidden; and

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- (iv) if the party objects to producing any of the hidden information, state the grounds for objecting;
 - and
 - (b) modify Form No. 17 for the purposes of complying with paragraph (a); and
 - (c) if an affidavit verifying the list of documents is required, modify Form No. 18 for the purposes of complying with paragraph (a).
- (3) If a party edits a document under subrule (1), the party is not required —
 - (a) to produce the hidden information to another party; or
 - (b) to allow another party to inspect or copy the hidden information,unless the Court orders otherwise.
- (2) Delete Order 26 rule 1(3) and (4) and insert:
 - (3) The statements in the Form No. 17 (list of documents) filed by a party giving discovery of documents must —
 - (a) be verified by an affidavit of a person listed in rule 4(4); or
 - (b) if the party requiring discovery, in its notice given under paragraph (1), so consents, be certified as correct by a person listed in rule 4(4) or the party's practitioner.

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- (3) Delete Order 26 rule 15A and insert:

16A. Certificate by practitioner

The practitioner of a party giving discovery must —

- (a) sign a certificate addressed to the Court that —
 - (i) states that the duty of discovery has been fully explained to the party; and
 - (ii) if the party is a corporation, identifies the individual, or individuals, to whom the duty was explained;
- and
- (b) file the certificate when or immediately after the party's list of documents is served.

13. Order 26A amended

After Order 26A rule 7 insert:

8. Certificate by practitioner for non-party or potential party

- (1) This rule applies to these practitioners —
 - (a) the practitioner (if any) who drafts the list of documents, or the affidavit verifying the list, for a non-party who has been ordered under rule 3 or 5 to give discovery;
 - (b) the practitioner (if any) who drafts the list of documents, or the affidavit verifying the list, for a potential party who has been ordered under rule 4 to give discovery.
- (2) This rule does not limit the operation of rule 6(2).

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- (3) A practitioner to whom this rule applies must —
- (a) sign a certificate addressed to the Court that —
- (i) states that the duty of discovery has been fully explained to the non-party or potential party (as the case requires); and
- (ii) if that party is a corporation, identifies the individual, or individuals, to whom the duty was explained;
- and
- (b) file the certificate when or immediately after the list of documents is served.

14. Order 27 amended

Delete Order 27 rule 1(3).

15. Second Schedule amended

- (1) In the Second Schedule delete Form No. 17 and insert:

17. List of documents (O. 26 r. 4(1) & 8)

Supreme Court of Western Australia General Division		No:
		List of documents
Parties	Plaintiff Defendant	
To	[Party] and its practitioner.	
From	[Party giving discovery]	
General	This list is served in compliance with the <i>Rules of the Supreme Court 1971</i> Order 26 rule 1(3) [or the Court's order dated 20 .]	

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Documents in possession (Part 1)	<p>Part 1A of this list lists the documents relating to the matters in question in this action that are in the possession, custody or power of the [<i>party giving discovery</i>].</p> <p>Part 1B of this list lists each of those documents listed in Part 1A that the [<i>party giving discovery</i>] objects to producing and the grounds for objecting.</p>
Documents no longer in possession (Part 2)	<p>Part 2A of this list lists the documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [<i>party giving discovery</i>].</p> <p>Part 2B of this list, for each document listed in Part 2A, states —</p> <ul style="list-style-type: none"> • the date on which it was last in the [<i>party giving discovery's</i>] possession, custody or power; and • what has become of it; and • who currently has possession or custody of or power over it.
Declarations	<p>The [<i>party giving discovery</i>] has made all reasonable enquiries, including of its employees and agents, to identify all documents of any description whatever relating to any matter in question in this action that are or were in its possession, custody or power.</p> <p>Neither the [<i>party giving discovery</i>], nor its practitioner, nor any other person on its behalf, has now, or ever had, possession or custody of or power over any document of any description whatever relating to any matter in question in this action, other than the documents listed in Parts 1A and 2A of this list.</p>
Inspection of documents ¹	<p>The documents in this list, other than those listed in Parts 1B and 2A, may be inspected at — [<i>address</i>] on [<i>date and times</i>].</p>

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Certificate by party giving discovery or its practitioner ²	I certify that the statements in this document are true. [Party]/[Party's practitioner]	Date:
Service details	This list and its attachments were served on [party] on [date] by [server] Signed:	Date:

List of documents — Part 1A³

The documents relating to the matters in question in this action that are in the possession, custody or power of the [party giving discovery] are as follows —

No.	Description of document
1.	

List of documents — Part 1B³

Of the documents listed in Part 1A the [party giving discovery] objects to producing the following on the following grounds.

No. in Part 1A	Grounds for objecting to producing the document

List of documents — Part 2A³

The documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [party giving discovery] are as follows —

No.	Description of document
1.	

List of documents — Part 2B³

For each document listed in Part 2A, the following states —

- the date on which it was last in the possession, custody or power of the [party giving discovery]; and
- what has become of it; and
- who currently has possession or custody of or power over it.

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No. in Part 2A	Date	What has become of it	Who currently has possession or custody of or power over it
1.			

Notes to Form No. 17 —

1. This notice must comply with O. 26 r. 8.
2. Do not complete this if this list is being verified by an affidavit. This certificate may be signed by a person listed in O. 26 r. 4(4) or the practitioner of the party giving discovery.
3. This Part must begin on a new sheet of paper and be attached to the main document.

(2) In the Second Schedule in Form No. 18 delete paragraphs 1, 2 and 3 and insert:

1. The list of documents produced to me and marked “Attachment A” is the list of the documents relating to the matters in question in this action that are or have been in the possession, custody or power of the [*party giving discovery*].
2. The documents listed in Part 1A of Attachment A are the documents relating to the matters in question in this action that are in the possession, custody or power of the [*party giving discovery*].
3. The [*party giving discovery*] objects to producing those of the documents in Part 1A of Attachment A identified in Part 1B on the grounds stated in Part 1B.
4. The documents listed in Part 2A of Attachment A are the documents relating to the matters in question in this action that were, but no longer are, in the possession, custody or power of the [*party giving discovery*].
5. The statements in Part 2B of Attachment A about the documents listed in Part 2A are true.
6. The [*party giving discovery*] has made all reasonable enquiries, including of its employees and agents, to identify all documents of any description whatever relating to any

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matter in question in this action that are or were in its possession, custody or power.

7. To the best of my knowledge, information and belief, neither the [*party giving discovery*], nor its practitioner, nor any other person on its behalf, has now, or ever had possession, custody or power over any document of any description whatever relating to any matter in question in this action, other than the documents listed in Parts 1A and 2A of Attachment A.

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Amendments about subpoenas **Part 4**

r. 16

Part 4 — Amendments about subpoenas

16. Order 36B amended

- (1) After Order 36B rule 1(4) insert:
 - (5) Unless the Court orders otherwise, this Order is subject to Order 34 rule 15A.
- (2) After Order 36B rule 3 insert:

3A. Alteration of date for attendance or production

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.
 - (2) The notice need not be served personally.
 - (3) Where notice is given under subrule (1), the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time that appeared in the subpoena, despite rule 3(5) and (6).
- (3) In Order 36B rule 6(4)(a) after “production” insert:
- or, if the addressee has received notice of a later date or time from the issuing party, at that later date or time
- (4) In Order 36B rule 6(4)(b) delete “production.” and insert:
- production or, if the addressee has received notice of a later date or time from the issuing party, at that later date.

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- (5) After Order 36B rule 6(5) insert:
- (6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.
- (7) The copy of a document may be —
- (a) a photocopy; or
 - (b) in PDF format on a CD-ROM.
- (6) Delete Order 36B rule 10(3), (4) and (5) and insert:
- (3) The issuing party must attach, to the front of a subpoena to produce to be served on the addressee, a notice and declaration in accordance with Form 22A.
- (4) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena that accompanies the documents produced to the Court under the subpoena.
- (5) Subject to subrule (6), the Registrar may, on the expiry of 4 months from the conclusion of the proceeding, cause to be destroyed all the documents, produced in the proceedings in compliance with a subpoena, that were declared by the addressee to be copies.
- (6) The Registrar may cause to be destroyed those documents, declared by the addressee to be copies, that have become exhibits in the proceeding when they are no longer required in connection with the proceeding, including on any appeal.

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Amendments about subpoenas **Part 4**

r. 17

17. Second Schedule amended

(1) In the Second Schedule in Form No. 22:

(a) in Section A delete “evidence:” and insert:

evidence unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

(b) in Section B delete “things:” and insert:

things unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

(c) in Section C delete “follows:” and insert:

follows unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

(d) in Section C delete “things:” and insert:

things unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

(e) in note 5 delete “In so far as” and insert:

If

(f) in note 5 delete “production.” and insert:

production or, if you receive notice of a later date or time from the issuing party, before that later date or time.

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(g) after note 9 insert:

9A. The copy of a document may be —

- (a) a photocopy; or
- (b) in PDF format on a CD-ROM.

(h) delete “**Return or destruction of documents or copies**”;

(i) delete notes 10 and 11.

(2) In the Second Schedule after Form No. 22 insert:

22A. Subpoena notice and declaration (O. 36B r. 10(3))

Supreme Court of Western Australia General Division/Court of Appeal		No:
		Subpoena notice and declaration
Parties	Plaintiff Defendant	
Notice to addressee		
<p>The <i>addressee</i> is the person to whom the subpoena is addressed, and who will be the recipient of the subpoena.</p> <p>You may produce copies of any subpoenaed documents, unless the subpoena specifically requires you to produce originals. A copy of a document may be —</p> <ul style="list-style-type: none"> (a) a photocopy; or (b) in PDF format on a CD-ROM. <p>You must complete the Declaration below, attach it to the subpoena or a copy of the subpoena and return them with the documents or things you provide to the Court under the subpoena.</p> <p>If you declare that the material you produce is copies of documents, the Registrar may, without further notice to you, destroy the copies after the expiry of 4 months from the conclusion of the proceeding or, if the documents become exhibits in the proceeding, when they are no longer required in connection with the proceeding, including on any appeal.</p> <p>If the material you produce to the Court is or includes any original document, the Court will return all of the material to you at the address specified by you in the Declaration below.</p>		

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Declaration by addressee (subpoena recipient)	
<i>[Tick the relevant option below, (provide your address as appropriate), sign and date]</i>	
<input type="checkbox"/>	All of the material I am providing to the Court in compliance with the attached subpoena is copies of documents. I acknowledge that the Court will destroy the copies once they are no longer required, without further notice to me.
<input type="checkbox"/>	Some or all of the material I am providing to the Court in compliance with the attached subpoena is an original document. Once the material is no longer required, all of the material should be returned to me at the following address —

	<i>[Signature of addressee]</i>

	<i>[Name of addressee]</i>

	<i>[Date]</i>

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Part 5 — Miscellaneous amendments**18. Order 1 amended**

- (1) In Order 1 rule 4(1) insert in alphabetical order:

prescribed fee means the fee prescribed by the
Supreme Court (Fees) Regulations 2002;

- (2) After Order 1 rule 6 insert:

7. Court fees

These Rules are to be read with but do not affect the
operation of the *Supreme Court (Fees)*
Regulations 2002.

19. Order 16 amended

In Order 16 delete the heading “**Attendance for examination**”
before rule 2(2).

20. Order 33 amended

In Order 33 delete the heading “**Chief Justice may give
directions**” before rule 12(3).

21. Order 37 amended

Delete Order 37 rule 6(1), (2) and (2a) and insert:

- (1) An affidavit must be confined to such facts as the
deponent is able of his or her own knowledge to prove.

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-
- (2) Despite subrule (1), an affidavit may contain statements of information or belief if —
- (a) the affidavit is made under, and for the purposes of proceedings under, a written law that permits it to contain such statements; or
 - (b) the affidavit is made under a provision of these Rules that permits it to contain such statements; or
 - (c) the affidavit is made for the purposes of interlocutory proceedings; or
 - (d) the Court has made an order permitting the affidavit to contain such statements.
- (3A) An affidavit containing statements of information or belief must set out the sources or grounds of that information or belief unless —
- (a) the affidavit is made under, and for the purposes of proceedings under, a written law that —
 - (i) prevents the deponent from disclosing those sources or grounds or information material to them; or
 - (ii) does not permit those sources or grounds or information material to them to be made public;or
 - (b) the Court has made an order permitting the affidavit to omit the sources or grounds.

22. Order 56 amended

In Order 56 rule 14 delete “or Form No. 68,”.

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23. Order 57 amended

In Order 57 delete rule 7(4).

24. Order 60A amended

Delete Order 60A rule 4(2) and insert:

- (2) The appeal is to be made to a Master unless —
 - (a) a Judge orders otherwise; or
 - (b) the appeal is from a direction made by an Appeals Registrar under Order 65B, in which case it is to be made to a Judge.

25. Order 67 amended

- (1) Delete Order 67 rule 11(1a).
- (2) After Order 67 rule 11(3) insert:
 - (4) This rule does not entitle a person to search, inspect or take a copy of any part of a document that contains information that the person is prevented by an Act from possessing.

26. Order 81C amended

- (1) In Order 81C rule 1 delete the definition of *DPP*.
- (2) Delete Order 81C rule 4 and insert:

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

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applicant must serve one copy of the form and any accompanying affidavit on the Director General.

- (2) On receiving the copies of a Form No. 103 and any accompanying affidavit from a Registrar, the Director General must serve one copy on the holder of the extraordinary licence to which the application relates.

- (3) Delete Order 81C rule 5(3) and (4).

27. Order 81D amended

In Order 81D rule 2A(5) delete “rule 9(1)(e),” and insert:

rule 10(1)(e),

28. Second Schedule amended

- (1) In the Second Schedule in Form No. 1:

- (a) delete “We command you, that” and insert:

You are commanded that,

- (b) delete “our” and insert:

the

- (2) In the Second Schedule in Form No. 3:

- (a) delete “Elizabeth the Second, etc. (*as in No. 1*).”;

- (b) delete “We command you, that” and insert:

You are commanded that,

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- (c) delete “our” and insert:

the

- (3) In the Second Schedule in Form No. 23:

- (a) delete “Elizabeth the Second (*as in No. 22*)”;
(b) delete “We command you” and insert:

This writ commands you

- (c) delete “we also command” and insert:

this writ also commands

- (4) In the Second Schedule in Form No. 63:

- (a) delete “our Sovereign Lady, the Queen in Her” and insert:

the

- (b) delete “to our Sovereign Lady” and insert:

to the State

- (c) delete “our said Sovereign Lady or her successors,” and insert:

the State,

- (d) delete the passage that begins with “Witness” and ends with “day of , 20 .”.

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(5) In the Second Schedule delete Form No. 67 and insert:

67. Certiorari (O. 56 r. 14)

(Heading as in cause or matter)

Writ of certiorari

To: [Name and address]

This writ commands you, on or before [date], to send to the Supreme Court, at [address], [state the record or decision to be quashed] together with this writ, or a copy of it, for that court to deal with as it sees fit.

Dated:

.....

Judicial officer

(6) In the Second Schedule delete Form No. 69 and insert:

69. Mandamus (O. 56 r. 16)

(Heading as in cause or matter)

Writ of mandamus

To: [Name and address]

This writ commands you to [set out the act to be done] or show cause why you have not done it.

The *Rules of the Supreme Court 1971* Order 56 rule 20 requires you to file in the Supreme Court, on or before [date], this writ, or a copy of it, and a certificate stating either that you have done the above act or why you have not done it.

Disobeying this writ is a contempt of court which may be punished by imprisonment or a fine or both.

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Dated:

.....
Judicial officer

(7) In the Second Schedule delete Form No. 70 and insert:

70. Procedendo (O. 56 r. 32)

(Heading as in cause or matter)

Writ of procedendo

To: [Name and address]

By a writ of prohibition dated [date] you were prohibited from [set out the prohibited act].

This writ commands you to [set out the act to be done] as if that writ of prohibition had not been issued.

Dated:

.....
Judicial officer

(8) In the Second Schedule delete Form No. 71 and insert:

71. Prohibition (O. 56 r. 33)

(Heading as in cause or matter)

Writ of prohibition

To: [Name and address]

This writ prohibits you from [set out the prohibited act].

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Dated:

.....
Judicial officer

- (9) In the Second Schedule delete Form No. 72.
(10) In the Second Schedule delete Form No. 73 and insert:

73. Habeas corpus (O. 57 r. 10)

(Heading as in cause or matter)

Writ of habeas corpus ad subjiciendum

To: [Name and address]

This writ commands you to have [*name of plaintiff or person restrained*] before the Supreme Court [*or before Justice*] at [*address*] on [*date*] at [*time of day*] and to then submit to the further order of the court as to the custody of that person (*the person restrained*).

The *Rules of the Supreme Court 1971* Order 57 rule 8 requires you, before or at the above time, to file in the Supreme Court a return to this writ, indorsed on or attached to the writ, that states all the causes of the detention of the person restrained.

Disobeying this writ is a contempt of court which may be punished by imprisonment or a fine or both.

Dated:

.....
Judicial officer

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(11) In the Second Schedule delete Form No. 78 and insert:

78. Order (general form) (O. 59 r. 10)

(Heading as in cause or matter)

Judicial officer(s):

Date of order:

The Court orders (*or* declares) —

1.

2.

.....
Judicial officer

Dated: 26 July 2010.

Judges' signatures:

W. S. MARTIN.

C. JENKINS.

M. J. MURRAY.

P. D. BLAXELL.

JOHN McKECHNIE.

ANDREW BEECH.

C. J. McLURE.

K. J. MARTIN.

C. PULLIN.

ROBERT MAZZA.

ERIC M. HEENAN.

J. PRITCHARD.

R. LE MIERE.