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SUPREME COURT ACT 1935

**SUPREME COURT
AMENDMENT RULES
(No. 4) 1996**

SUPREME COURT ACT 1935

SUPREME COURT AMENDMENT RULES (NO. 4) 1996

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules (No. 4) 1996*.

Commencement

2. These rules come into operation on 1 November 1996.

Principal rules

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

[* *Reprinted as at 21 November 1994.*

For amendments to 18 October 1996 see 1995 Index to Legislation of Western Australia, Table 4, p. 268 and Gazette 9 August 1996.]

Order 1 amended

4. (1) After Order 1 Rule 3 of the principal rules the following rule is inserted —

“

Inherent powers not affected

- 3A.** The inherent power of the Court to control the conduct of a proceeding is not affected by these Rules.

”.

(2) Order 1 Rule 4 (1) of the principal rules is amended by inserting in the appropriate alphabetical position the following definition —

“**Case Management Registrar**” means a Registrar appointed as such by the Chief Justice; ”.

Order 4 amended

5. Order 4 Rule 2 of the principal rules is amended by deleting subparagraphs (b) and (c) and substituting the following subparagraph —

“ (b) if in chambers, in accordance with Order 59. ”.

Order 7 amended

6. After Order 7 Rule 3 of the principal rules the following Rule is inserted —

“**Unserved writs may be struck out**

4. (1) If at any time after 6 months after a writ is issued it appears to the Court that —

- (a) no affidavit of service of the writ has been filed by the plaintiff; and
- (b) no appearance has been entered to the writ,

the Court may issue a summons (to a hearing at least 7 days after it is issued) to the plaintiff to show cause why the writ should not be struck out.

(2) If at the hearing the Court is not satisfied that the writ has not been served for good reason the Court may —

- (a) strike out the writ; or
- (b) make directions as to the service of or the time for serving the writ.

(3) On being struck out, a writ and any writ that is concurrent with it cease to be valid.

”.

Order 14 amended

7. (1) Order 14 Rule 1 of the principal rules is amended —

(a) in paragraph (1) by deleting “Rule” and substituting the following —

“ Order ”; and

(b) by deleting paragraphs (2) and (3) and substituting the following paragraph —

“

(2) This Order applies to every action begun by writ other than a probate or admiralty action.

”.

(2) Order 14 Rule 5 of the principal rules is repealed.

Order 15 repealed

8. Order 15 of the principal rules is repealed.

Order 26 amended

9. (1) Order 26 Rule 1 (5) of the principal rules is deleted.

(2) Order 26 Rules 2 and 2A of the principal rules are repealed and the following rule is substituted —

“

Continuing obligation to give discovery

2. (1) A party that has been requested under Rule 1 to give discovery shall, subject to any order made under Rule 7, be under a continuing obligation until the conclusion of the trial to give discovery of any document relevant to any matter in question and not already discovered by that party.

(2) A party that has been ordered under Rule 7 to give discovery shall, subject to the order, be under a continuing obligation until the conclusion of the trial to give discovery of any document to which the order relates and not already discovered by that party.

(3) Discovery under paragraph (1) or (2) shall be given in accordance with paragraphs (4) and (5).

(4) A party shall give discovery to another party forthwith after the party becomes aware of a discoverable document unless the document came into existence after discovery was given under Rule 1 or under an order made under Rule 7 and —

(a) is a communication between 2 or more of the parties or their solicitors; or

(b) is privileged from production.

(5) At least 21 days before the trial a party shall give discovery of any document that has not already been discovered by that party, including documents referred to in paragraph (4) (a) and (b).

(6) Discovery under this Rule shall be given by filing and serving on the other parties a supplementary list in accordance with Rule 4 showing the relevant documents together with a verifying affidavit.

”.

(3) Order 26 Rule 3 of the principal rules is amended by deleting “the application” and substituting the following —

“ an application under this Order ”.

(4) Order 26 Rule 4 (1) of the principal rules is amended by deleting “Rule 2” and substituting the following —

“ Rule 7 ”.

(5) Order 26 Rule 5 (1) of the principal rules is amended by deleting “any of the foregoing rules of this Order” and substituting the following —

“ Rule 1, 2 or 7 ”.

(6) Order 26 Rule 6 (2) of the principal rules is amended by deleting “Rule 2.” and substituting the following —

“ Rule 7. ”.

(7) Order 26 Rule 7 of the principal rules is repealed and the following rule is substituted —

“

Orders as to discovery

7. (1) An application for an order under this Rule may be made at any time by —

- (a) a party whose request under Rule 1 for discovery has not been satisfied; or
- (b) a party who has been requested under Rule 1 to give discovery, whether or not the party has complied with the request.

(2) An affidavit in support of the application is not necessary.

(3) On an application, or at any time of its own motion in any proceedings, the Court, having regard to Order 1 Rule 4B, may —

- (a) order any or all of the parties to give discovery at that stage or at some specified future stage of the action;
- (b) as to the documents to be discovered by any party —
 - (i) order that discovery be given of only those specified documents or specified classes of document;
 - (ii) order that discovery be given of only those documents that are directly relevant to any specified matter in question or to all matters in question;
 - (iii) order that discovery be given of all documents relating to any specified matter in question or to all matters in question;
- (c) make orders as to which parties are to be given discovery by any specified party;
- (d) order that any or all of the parties not give discovery at that stage of the action, or at all;
- (e) order any or all parties to make, file and serve an affidavit verifying the party's list of documents discovered.

(4) For the purposes of this rule if a party is ordered to give discovery, the party shall, subject to the order, make and serve, a list of the documents that are or have been in the party's possession, custody or power.

”.

(8) Order 26 Rule 8 (1) of the principal rules is amended by deleting “Rule 2” and substituting the following —

“ Rule 7 ”.

(9) Order 26 Rule 15 (1) of the principal rules is amended by deleting “Rules 2 (2)” and substituting the following —

“ Rules 7 ”.

Order 26A inserted

10. After Order 26 of the principal rules the following Order is inserted —

“

ORDER 26A

DISCOVERY ETC. FROM NON-PARTIES AND POTENTIAL PARTIES

Interpretation

1. In this Order, unless the contrary intention appears —

“**description**”, in relation to person who is or may be a potential party, includes the person's name, sex, age, occupation, place of residence, place of business and whether the person is an individual, a body corporate or an unincorporated body of persons;

“**document**” has the same definition as in Order 26 Rule 1A;

“**possession**” includes custody or power.

Public interest immunity not affected

2. This Order does not affect any rule of law that authorizes or requires the withholding of a document on the ground that its disclosure would be injurious to the public interest.

Discovery etc. to identify a potential party

3. (1) This Rule applies if a person who appears to have a cause of action against a person (“**the potential party**”) wants —

- (a) to commence proceedings against the potential party; or
- (b) to take proceedings against the potential party in the course of an action to which the person is a party,

but the person, after reasonable enquiries, has not been able to ascertain a description of the potential party sufficient for the purposes of doing so.

(2) If there are reasonable grounds for believing that another person (“**the non-party**”) had, has, or is likely to have had or to have, possession of information, documents or any object that may assist in ascertaining the description of the potential party, the person may apply for an order under this Rule.

(3) The application shall be supported by an affidavit and a copy of both shall be served on the non-party.

(4) On the application the Court may order the non-party, and if the non-party is a body corporate, a person having the management of the body to do either or both of the following:

- (a) to give discovery to the applicant of all documents that are or have been in the non-party’s possession relating to the description of the potential party;
- (b) to personally attend the Court to be examined in relation to the description of the potential party.

(5) If the Court orders a person to personally attend the Court, it may order the person to produce to the Court any document or object in the non-party’s possession that relates to the description of the potential party.

(6) The Court may direct that the examination of the person be by a Registrar.

(7) A person required to personally attend the Court shall be entitled to the like conduct money and payment for expenses and loss of time as on an attendance at a trial in Court.

Discovery from a potential party

4. (1) This Rule applies if a person who may have a cause of action against a person whose description has been ascertained (“**the potential party**”) wants —

- (a) to commence proceedings against the potential party; or
- (b) to take proceedings against the potential party in the course of an action to which the person is a party,

but the person, after reasonable enquiries, has not been able to obtain sufficient information to enable a decision to be made as to whether to commence or take the proceedings.

(2) If there are reasonable grounds for believing that the potential party had, has, or is likely to have had or to have, possession of documents that may assist in making the decision, the person may apply for an order under this Rule.

(3) The application shall be supported by an affidavit and a copy of both shall be served on the potential party.

(4) On the application the Court may order the potential party to give discovery of all documents that are or have been in the potential party’s possession and that may assist the applicant in making the decision.

Discovery from a non-party

5. (1) If there are reasonable grounds for believing that a person who is not party to an action (“**the non-party**”) had, has, or is likely to have had or to have, possession of documents that relate to any matter in question in the action, a party to the action may apply for an order under this Rule.

(2) The application shall be supported by an affidavit and a copy of both shall be served on the non-party and the other parties to the action.

(3) On the application the Court may order the non-party to give discovery of all documents that are or have been in the non-party's possession and that relate to any matter in question in the action.

Order 26 applies to discovery ordered under this Order

6. (1) A court making an order for discovery under this Order may exercise any of the powers in Order 26 Rule 7 (3).

(2) Order 26 applies in relation to any discovery that under this Order is ordered to be given as if it had been ordered under Order 26 Rule 7.

Costs

7. (1) An order made under this Order may be made on the condition that the applicant give security for the costs and expenses of the person against whom the order is made, both in respect of the application and of complying with the order and with this Order.

(2) On an application under this Order the Court may make orders as to the costs and expenses —

- (a) of any person in respect of the application; and
- (b) of a person against whom an order is made in respect of complying with the order and with this Order.

”.

Order 27 amended

11. Order 27 Rule 1 of the principal rules is amended —

- (a) in paragraph (1) by deleting “once without leave, before a cause or matter has been entered for trial or hearing,” and substituting the following —

“ with the leave of the Court ”; and

- (b) by deleting paragraphs (1a), (1b), (1c), (5) and (6).

Order 29 amended

12. (1) Order 29 Rule 1 of the principal rules is amended by deleting the definition of “Case Management Registrar”.

(2) Order 29 Rule 2 of the principal rules is amended by inserting after the Rule designation “**2.**” the paragraph designation “(1)”.

(3) Order 29 Rule 2 of the principal rules is amended by inserting the following paragraphs —

“

(2) A direction that parties attend a mediation conference does not operate as a stay of proceedings, unless otherwise ordered.

(3) No order or direction shall be made under this Rule that amends, cancels, or is inconsistent with, a case management direction made under Order 29A, except under Order 29A Rule 13.

”.

(4) Order 29 Rule 3 (1) of the principal rules is amended —

(a) by inserting after subparagraph (a) the following subparagraph —

“

(aa) each party shall, subject to any directions, take such steps as may be necessary to ensure that the mediation conference occurs as soon as possible;

”;

and

(b) by inserting after subparagraph (b) the following subparagraphs —

“

(ba) each party’s costs of and incidental to a mediation 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;

- (bb) the fees and expenses of any mediator who is not a Mediation Registrar shall be paid by the parties in equal shares, unless it is ordered otherwise or the parties agree;

”.

(5) Order 29 Rule 3 (2) of the principal rules is deleted and the following paragraph is substituted —

“

(2) A Mediation Registrar or a mediator —

- (a) shall not, unless the parties agree, report to the Court on a mediation conference;
- (b) whether or not the parties agree, may report to the Court on any failure by a party to co-operate in a mediation conference; but the report shall not be disclosed to the trial judge except for the purposes of determining any question as to costs.

”.

(6) After Order 29 Rule 3 of the principal rules the following Rule is inserted —

“

Application of Rules 4 and 4A

3A. Rules 4 and 4A do not apply to any action, cause or matter to which Order 29A applies.

”.

(7) Order 29 Rule 4 of the principal rules is amended by deleting paragraphs (5) and (6).

(8) After Order 29 Rule 5 (2) of the principal rules the following paragraph is inserted —

“

(3) A summons for directions shall not be taken out for directions that amend or cancel or are inconsistent with a case management direction made under Order 29A.

”.

Order 29A inserted

13. After Order 29 of the principal rules the following Order is inserted —

“

ORDER 29A — CASE MANAGEMENT

PART 1 — PRELIMINARY

Application

1. (1) The Order applies to cases commenced on or after 1 November 1996 other than —

(a) a case that is entered in the Expedited List under Order 31A; and

(b) a case that the Chief Justice directs is to be included in the Long Cause List.

(2) This Order does not prevent the Court making a direction under Order 29 Rule 2 in a case to which this Order applies.

(3) The fact that a direction is made by the Court under Order 29 Rule 2 in a case to which this Order applies does not prevent the application of this Order to that case.

Interpretation

2. In this Order, unless the contrary intention appears —

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

“**case management direction**” is defined in Rule 3;

“**enforcement order**” is defined in Rule 4;

“**mediator**” means a person approved as such by the Chief Justice, or a Mediation Registrar (as defined in Order 29).

Case management directions

3. (1) A case management direction is a procedural direction for the purpose of leading to the efficient and timely disposal of the proceedings.

- (2) A case management direction may —
- (a) dispense with all or any or any further pleadings;
 - (b) order specified pleadings to be filed;
 - (c) dispense with any interlocutory pleadings or steps;
 - (d) direct that a certificate of readiness is not required for the purposes of Order 33 or Order 58 Rule 19;
 - (e) direct the parties or counsel to file and exchange memoranda before the hearing of any interlocutory application in order to clarify the matters in issue before the hearing;
 - (f) direct that an interlocutory application be dealt with, or a conference be held, by telephone, videophone or other similar means of communication;
 - (g) direct that an interlocutory application be dealt with, and any evidence in relation to it be provided, by fax, telegram, telex, courier post or other similar means;
 - (h) give directions as to the use of videotapes, films, computers and other equipment in any interlocutory proceeding;
 - (i) give directions for the speedier and more effective recording of evidence at any interlocutory proceeding;
 - (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 a conference directed under subparagraph (f) be conducted by a mediator; but shall not, without the consent of the parties, direct that a conference take place where a party would become liable to remunerate a mediator;

- (l) in relation to a conference directed under subparagraph (f), set the terms or conditions for the conference and deal with anything in relation to the conference;
- (m) 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;
- (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;
 - (ii) stating where and when it may be inspected; and
 - (iii) requiring B to serve A, within 7 days after the service of the notice, a written notice agreeing or refusing to agree to the admission in evidence of the object without further proof of it;
- (o) direct a solicitor for a party to give the party a memorandum stating —
 - (i) the approximate costs and disbursements of the party to the date of the memorandum;
 - (ii) the estimated future costs and disbursements of the party to but not including the trial;
 - (iii) the estimated length of the trial and the estimated costs and disbursements of the trial;
 - (iv) the estimated party and party costs that would be payable by the party if the party were unsuccessful at trial;
- (p) in exceptional circumstances direct that an application by a party under this Order operate as a stay of proceedings;

- (q) in exceptional circumstances or if not to do so would frustrate the appeal, direct that an appeal against a Case Management Registrar's decision under this Order operate as a stay of proceedings;
- (r) direct that an application for an adjournment of any proceeding be supported by affidavits of specified people;
- (s) give directions to assist the convenience of the parties or witnesses;
- (t) give directions as to the manner in which the parties shall defray the costs of giving effect to any case management direction;
- (u) direct that a specified case management direction be complied with by a set date.

(3) A case management direction shall not order the attachment or committal of a person.

(4) A case management direction is not enforceable by writ of attachment or order of committal.

Enforcement orders

4. 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 order;
- (c) a self-executing order for judgment, striking out pleadings, or otherwise;
- (d) an order under Order 66 Rule 5.

Inconsistencies with other Rules

5. If a Rule of this Order is inconsistent with these Rules, the Rule of this Order prevails.

PART 2 — CASE MANAGEMENT CONFERENCES

Status conference

6. (1) A Case Management Registrar shall summons all parties to a case to attend a status conference before such a Registrar.

(2) The status conference shall be held within 21 days after the first appearance is entered in the case or at a later time decided by a Case Management Registrar.

(3) If within 6 months after a writ is issued an affidavit of service of the writ has been filed but no appearance has been entered to the writ, a Case Management Registrar 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 Management Registrar 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; and
- (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 Management Registrar may at the request of a party or the parties or on the Registrar's own initiative —

- (a) subject to Order 60A, make any interlocutory order that the Registrar thinks fit;
- (b) make any case management directions that the Registrar thinks fit;
- (c) make any enforcement orders that the Registrar thinks fit.

(7) A Case Management Registrar may adjourn the status conference from time to time.

Case evaluation conference

7. (1) A Case Management Registrar shall summons all parties to a case to attend a case evaluation conference before such a Registrar.

(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 Management Registrar.

(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 Management Registrar is to review the documents on the Court file and inquire into these matters:

- (a) the state of the pleadings and if at that time, they are not closed, why;
- (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; and
- (g) the administrative resources likely to be needed for the trial.

(5) At the case evaluation conference the Case Management Registrar may at the request of a party or the parties or on the Registrar's own initiative —

- (a) subject to Order 60A, make any interlocutory order that the Registrar thinks fit;
- (b) make any case management directions that the Registrar thinks fit;
- (c) make any enforcement orders that the Registrar thinks fit.

(6) A Case Management Registrar may adjourn the case evaluation conference from time to time; but not to a date on or after the date of the listing conference.

Listing conference

8. (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; and
 - (d) whether the case in all respects is ready to go to trial.
- (4) At the listing conference the Judge may —
- (a) make any directions under Order 29 Rule 2 that the Judge thinks fit;
 - (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
 - (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.

PART 3 — GENERAL

Other parties to be served within 24 hours

9. If under this Order a document has to be filed and served, a copy of the document shall be served within 24 hours after it is filed.

Who is to attend conferences

10. (1) A conference required or directed under this Order, other than a listing conference, shall be attended by each party to the case and the solicitor or counsel, if any, representing each party, unless ordered otherwise.

(2) 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 shall attend.

(3) If there is no solicitor on the record for a party that is a body corporate, the Case Management Registrar or Judge presiding at the conference may permit a person who is not a solicitor to represent the party.

Mediation conferences

11. (1) If parties are directed to attend a mediation conference, each party shall, subject to any directions, take such steps as may be necessary to ensure that the conference occurs as soon as possible.

(2) Each party's costs of and incidental to a mediation 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.

(3) The fees and expenses of any mediator who is not a Mediation Registrar are to be paid by the parties in equal shares, unless it is ordered otherwise or the parties agree.

(4) Within 2 weeks after the conclusion of a mediation conference the plaintiff shall lodge with the Court a report, signed by or on behalf of each party —

- (a) confirming that the conference has occurred as directed; and
- (b) recording the substance of any resolution or narrowing of the points of difference between the parties achieved as a result of the conference.

(5) A mediator —

- (a) shall not, unless the parties agree, report to the Court on a mediation conference;
- (b) whether or not the parties agree, may report to the Court on any failure by a party to co-operate in a mediation conference; but the report shall not be disclosed to the trial judge except for the purposes of determining any question as to costs.

(6) A direction that parties attend a mediation conference does not operate as a stay of proceedings, unless otherwise ordered.

Applications at case management conferences

12. (1) A party to a case may at any time apply to a Case Management Registrar —

- (a) for any interlocutory order that under Order 60A a Case Management Registrar has jurisdiction to make;
- (b) for any case management direction to be made under this Order;
- (c) to have a case management direction made by a Case Management Registrar amended or cancelled.

(2) The application is to be made by filing an application in Form No. 18A and serving it on the other parties.

(3) A Case Management Registrar, on receipt of the application —

- (a) may deal with the application or refer it to a Master under Order 60A Rule 3, without requiring the parties to attend a hearing; or
- (b) subject to Order 60A Rule 3, may deal with the application at the status conference or the case evaluation conference (as the case may be) and for that purpose may relist such a conference.

Judges and Masters may amend or cancel directions

13. A Judge or a Master at any interlocutory proceeding, or a Judge at trial, who is satisfied there are exceptional reasons for doing so, may amend or cancel a case management direction made by a Case Management Registrar.

Non-compliance with case management direction: duty to notify etc.

14. (1) A party to a case shall forthwith file, and serve on the other parties, a notice of any non-compliance by another party with an interlocutory order or a case management direction made in respect of the case by a Case Management Registrar, or with a direction made under this Order by a Master or a Judge.

(2) A Case Management Registrar, on receipt of such a notice or on becoming aware of such a non-compliance, may relist the status conference or the case evaluation conference (as the case may be), unless such a conference is already listed.

Cases that are struck out etc.

15. If a case is entered for trial and —

- (a) the entry for trial is countermanded; or
- (b) the case is struck out of the list,

this Order (other than Rule 6) again applies to the case and for that purpose a Case Management Registrar shall again summons all parties to attend a case evaluation conference under Rule 7.

”.

Order 31A amended

14. Order 31A Rule 8 (1) of the principal rules is amended by deleting “and (5)”.

Order 33 amended

15. (1) Order 33 Rule 8B (1) of the principal rules is amended by inserting after subparagraph (a) the following subparagraph —

“ (ab) an order under Rule 9 countermanding the entry; ”.

- (2) Order 33 Rule 9 of the principal rules is amended —
- (a) in paragraph (1) by deleting “to a Master”;
 - (b) in paragraph (5) by —
 - (i) deleting “Master” and substituting the following —
“ Court ”; and
 - (ii) deleting “he” in the 3 places it occurs and substituting the following —
“ it ”.

Order 34 amended

16. (1) After Order 34 Rule 5 (4) of the principal rules the following paragraph is inserted —

“
(5) At the conclusion of all the evidence at a trial, the Court may direct the parties to submit written submissions instead of or as adjuncts to their closing addresses.
”.

(2) After Order 34 Rule 5 of the principal rules the following Rule is inserted —

“
Time etc. limits at trial

- 5A.** (1) A Judge may at any time by direction —
- (a) limit the time to be taken in examining, cross-examining or re-examining a witness;
 - (b) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;
 - (c) limit the time to be taken in making any oral submission;
 - (d) limit the time to be taken by a party in presenting its case;

- (e) limit the time to be taken by the trial;
- (f) amend any such limitation.

(2) In deciding whether to make any such direction, a Judge shall have regard to these matters in addition to any other matters that may be relevant:

- (a) the time limited for a trial must be reasonable;
- (b) any such direction must not detract from the principle that each party is entitled to a fair trial;
- (c) any such direction must not detract from the principle that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;
- (d) the complexity or simplicity of the case;
- (e) the number of witnesses to be called by the parties;
- (f) the volume and character of the evidence to be led;
- (g) the state of the Court lists;
- (h) the time expected to be taken for the trial; and
- (i) the importance of the issues and the case as a whole.

”.

Order 36 amended

17. (1) Order 36 Rule 12 (1) of the principal rules is repealed and the following Rule is substituted —

“

- (1) A writ of subpoena —
 - (a) *ad testificandum* shall be in the form of Form No. 21;
 - (b) *duces tecum* shall be in the form of Form No. 22.

”.

(2) After Order 36 Rule 12 (3) of the principal rules the following paragraphs are inserted —

“

(4) With the leave of the Court a writ of subpoena *duces tecum* may require the person to produce the document or object concerned to the Court on a date before the date of the trial so that the party suing out the writ may inspect the document or object.

(5) When giving leave or at any other time, the Court may order —

(a) the party suing out the writ of subpoena or any other party to attend the Court to inspect the document or object produced within a set period; and

(b) that the document or object be returned to the person who produced it after it has been so inspected or after the set period, whichever happens first.

(6) A document or object so produced shall be delivered into the custody of the Court and, if not returned under an order made under paragraph (5), shall be produced at the trial by the officer of the Court who has custody of it.

(7) If a document or object is returned to a person under an order made under paragraph (5) and the party who sued out the writ of subpoena or any other party wants the document or object produced at the trial, the party shall give the person at least 14 days notice of the date when it is to be produced, unless the Court orders otherwise.

(8) Subject to any order of the Court, if a party does not give notice under paragraph (7) the person who produced the document or object is released from the writ of subpoena *duces tecum*.

”.

(3) After Order 36 Rule 16 (2) of the principal rules the following paragraph is inserted —

“

(3) At the time of service of a writ of subpoena on a person, the person shall be offered or paid conduct money reasonably sufficient to cover the person's expenses in travelling to and from the court.

”.

(4) After Order 36 Rule 16 of the principal rules the following Rule is inserted —

“

Early compliance with subpoena *duces tecum*

16A. (1) A person served with a writ of subpoena *duces tecum* may comply with the writ's requirement to produce documents or objects by giving them and a written list describing them together with a copy of the subpoena, to the Registrar at least 2 days before the date when the writ requires them to be produced.

(2) The documents or objects and list may be given to the Registrar by the person in person or by causing them to be delivered to the Registrar, by post or otherwise, at least 2 days before that date.

(3) On receiving the documents or objects and the list the Registrar shall issue a receipt to the person.

(4) The Registrar shall produce the documents or objects to the court at the trial or hearing concerned.

”.

(5) Order 36 Rule 17 of the principal rules is repealed and the following Rule is substituted —

“

Duration of writ of subpoena

17. Subject to Rule 12 (8) and 16A, a writ of subpoena remains in force in respect of a person named in it from the date of issue until the person is released by the Court or, if not released, until the conclusion of the trial or hearing concerned.

”.

Order 37 amended

18. Order 37 Rule 6 (1) of the principal rules is amended by deleting “, Order 15 Rules 2 (3) and 4 (4)”.

Order 43 amended

19. Order 43 Rule 16 (1) of the principal rules is deleted and the following paragraph is substituted —

“

(1) The parties to proceedings or their solicitors may file a written consent to the making of an order in those proceedings, other than —

- (a) an order extending a standard time provided for under Order 29;
- (b) an order that amends, cancels, or is inconsistent with, a case management direction made under Order 29A; or
- (c) an order that amends, cancels or is inconsistent with an interlocutory order made by a Case Management Registrar in a case to which Order 29A applies.

”.

Order 52 amended

20. (1) Order 52 Rule 2 (5) of the principal rules is deleted.

(2) Order 52 Rule 3 (3) of the principal rules is deleted.

(3) Order 52 Rule 4 (3) of the principal rules is deleted.

Order 59 amended

21. (1) Order 59 Rule 1 of the principal rules is amended by inserting after subparagraph (3) the following subparagraph —

“

(3a) applications to Case Management Registrars in relation to cases to which Order 29A applies;

”.

(2) Order 59 Rule 3 of the principal rules is repealed and the following rule is substituted —

“

Form of applications in chambers

3. (1) An application in chambers, other than an application made by originating summons, shall be made —

- (a) if it is *ex parte*, by motion;

(b) in any other case by summons,

unless these Rules require or authorize it to be made otherwise.

(2) An application to a Case Management Registrar in chambers in relation to a case to which Order 29A applies shall be made in accordance with Order 29A Rule 12.

(3) An application in chambers shall state the orders that the applicant seeks and the grounds for the application.

(4) The Court may direct notice of a motion made *ex parte* to be served on any person the Court thinks fit.

”.

(3) Order 59 Rule 7 of the principal rules is repealed and the following rule is substituted —

“

Application of O 58 r 22 to 28

7. Order 58 Rules 22 to 28, with any necessary changes, apply in relation to an application in chambers under this Order in the same way as they apply to an application made by originating summons.

”.

(4) Order 59 Rule 9 of the principal rules is repealed and the following rule is substituted —

“

Parties to confer before making application

9. (1) No order shall be made on an application in chambers unless the application was filed with a memorandum stating —

(a) that the parties have conferred to try to resolve the matters giving rise to the application; and

(b) the matters that remain in issue between the parties.

(2) The Court may waive the operation of paragraph (1) in a case of urgency or for other good reason.

”.

Order 60A inserted

22. After Order 60 of the principal rules the following Order is inserted —

“

ORDER 60A

**JURISDICTION OF REGISTRARS AND APPEALS FROM
REGISTRARS' DECISIONS**

Powers of Registrars

1. A Registrar may exercise these powers of the Court:
 - (a) under Order 42 Rule 8, to obtain the consent of a defendant in person;
 - (b) under Order 46 Rule 3A, to grant leave to issue a writ of possession;
 - (c) under Order 62A Rule 4, to grant leave in a mortgage action begun by a writ to enter judgment in default of appearance or in default of defence;
 - (d) under section 129C (4) of the *Transfer of Land Act 1893* and, where the application is not opposed, under the other provisions of that section.

Powers of Case Management Registrars

2. (1) In relation to a case to which Order 29A applies, a Case Management Registrar may exercise the powers of the Court under these Rules:

Order 2	Order 27
Order 3	Order 28
Order 7	Order 30 Rules 2 and 5
Order 8	Order 33 Rule 2
Order 18	Order 37
Order 19	Order 41
Order 20	Order 52 Rules 2 to 5
Order 21	Order 58 Rules 22 to 27
Order 22	and 29
Order 23	Order 73
Order 26	Order 75 Rules 4, 5, 6 and 7
Order 26A	Order 83

(2) The powers in paragraph (1) are in addition to any other powers conferred on Case Management Registrars.

(3) A Case Management Registrar cannot order the attachment or committal of any person.

(4) An interlocutory order made by a Case Management Registrar is not enforceable by a writ of attachment or order of committal.

Registrar may refer matters to a higher judicial officer

3. (1) A Case Management Registrar may refer a matter arising in a hearing under Order 29 Rule 4 to a Master who may either dispose of the application or matter or refer it back to the Registrar with such directions as the Master thinks fit.

(2) A Case Management Registrar may —

- (a) with or without hearing it, refer an application made under Order 29A Rule 12; or
- (b) refer a matter arising in a case management conference under Order 29A,

to a Master who may either dispose of the application or matter or refer it back to the Registrar with such directions as the Master thinks fit.

(3) A Registrar may refer any other application or matter to the Court and the Court may either dispose of the application or matter or refer it back to the Registrar with such directions as it thinks fit.

(4) When a Registrar refers an application or a matter under —

- (a) paragraph (3);
- (b) Order 43 Rule 11 (2);
- (c) Order 63 Rule 2 (4); or
- (d) Order 66 Rule 45 or 52,

the referral shall be by memorandum containing short background notes, the reason or reasons for the referral and the Registrar's preliminary views on the issue or issues upon which the referral is sought.

Appeals from Registrars

4. (1) Subject to paragraph (6), a person affected by an order or decision of a Registrar may appeal from it.

(2) The appeal is to be made to a Master except an appeal from a direction made by an Appeals Registrar under Order 65B which is to be made to Judge.

(3) The decision of a Master on an appeal from a procedural decision of a Registrar is final.

(4) The decision of a Judge on an appeal from a decision of a Registrar is final.

(5) A procedural decision means —

- (a) a case management direction made under Order 29A;
- (b) a decision as to the time for compliance with an interlocutory order; or
- (c) an enforcement order made under Order 29A other than a self-executing order for judgment, striking out pleadings, or otherwise.

(6) This Rule does not apply to an order or decision of a Registrar —

- (a) made or given in relation to a cause, matter, question or issue referred to or tried by the Registrar under section 50 or 51 of the Act;
- (b) made or given in proceedings to which Order 61 applies; or
- (c) when acting as a Taxing Officer.

Appeal procedure

5. (1) An appeal from a Registrar shall be commenced within 3 days after the date of the decision concerned by filing a notice of appeal.

(2) The notice of appeal shall state —

- (a) the order or direction appealed against;
- (b) briefly, but specifically, the grounds of the appeal; and
- (c) the orders or directions to be sought at the appeal.

(3) All parties shall file written submissions within 3 days after the filing of the notice of appeal.

(4) No appeal books are required for the appeal.

(5) The appeal shall be entered for hearing within 7 days after it is commenced and if not so entered shall be taken to have been discontinued.

(6) Within 24 hours after filing a document under this Rule a copy of it shall be served on the other parties.

Powers of Judge or Master on appeal

6. (1) An appeal from a Registrar shall be by way of rehearing.

(2) The Judge or Master hearing an appeal has the powers and duties of the Full Court on an appeal and may cancel or amend any interlocutory order or case management direction made by the Registrar.

”.

Order 63 amended

23. Order 63 Rule 2 (1) of the principal rules is amended by deleting “, whether in court or in chambers,” and substituting the following —

“ in court ”.

Order 63A inserted

24. After Order 63 of the principal rules the following Order is inserted —

“

ORDER 63A

**APPEALS FROM INTERLOCUTORY ORDERS AND
JUDGMENTS OF JUDGES AND MASTERS**

Interpretation

1. In this Order, unless the contrary intention appears —

“**appeal**” includes an application for leave to appeal.

Application

2. This Order applies to an appeal to the Full Court from an interlocutory order or interlocutory judgment of a Judge or Master.

Commencing an appeal

3. (1) The appeal shall be commenced within 21 days after the order or judgment by filing —

- (a) a notice of appeal;
- (b) if necessary, an application for leave to appeal and a draft notice of appeal; and
- (c) 2 copies of the appeal papers,

and by serving a copy of each on each other party.

(2) The notice of appeal or draft notice of appeal shall state —

- (a) the order or judgment appealed against;
- (b) briefly, but specifically, the grounds of the appeal; and
- (c) the orders to be sought at the appeal.

(3) The appeal papers shall consist of all those papers that the appellant considers are necessary for the Court to determine the appeal, including an extracted copy of the order or judgment under appeal.

(4) If a respondent to the appeal considers there are additional papers that are necessary for the Court to determine the appeal, the respondent shall file 2 copies of them and serve a copy on each other party within 14 days after being served under paragraph (1).

Directions hearing

4. (1) As soon as practicable after an appeal is commenced it shall be referred to the Judge or Master who made the order or judgment under appeal, or if that person is absent to another Judge or Master, for a directions hearing in chambers.

(2) At the directions hearing the Judge or Master may —

- (a) direct that an application for leave to appeal not be heard *ex parte*;
- (b) direct that an application for leave to appeal be heard together with the appeal;
- (c) on any application for leave to appeal, grant or refuse leave;
- (d) direct that the appeal or any application for leave to appeal proceed under Order 63;
- (e) make any directions that are necessary or desirable for the expeditious hearing of the appeal.

(3) If at the directions hearing —

- (a) leave to appeal is granted, the draft notice of appeal shall stand as the notice of appeal;
- (b) any order is made *ex parte*, the applicant shall serve any other party with details of the order within 24 hours.

Hearing the appeal

5. (1) This Rule does not apply to an appeal that has been directed to proceed under Order 63.

(2) An appeal shall be entered for hearing within 7 days after the directions hearing and if not so entered shall be taken to have been discontinued.

(3) No appeal books are required for the appeal.

(4) The appeal shall be heard by the Full Court constituted by 2 Judges unless a Judge or the Full Court directs otherwise.

Application of Order 63

6. Order 63 applies in respect of appeals to which this Order applies unless a contrary intention appears from this Order.

”.

Order 65B inserted

25. After Order 65A of the principal rules the following Order is inserted —

“

ORDER 65B

APPEALS GENERALLY

Application

1. This order applies to any appeal to a Judge or the Full Court.

Interpretation

2. In this Order unless the contrary intention appears —

“**Appeals Registrar**” means a Registrar appointed as such by the Chief Justice;

“**mediator**” means a person approved as such by the Chief Justice, or a Mediation Registrar (as defined in Order 29).

Appeal Registrar's powers

3. (1) The Appeals Registrar may —

- (a) direct the parties to an appeal to attend a conference with a mediator for the purpose of identifying, resolving and narrowing the points of difference between them; but shall not, without the consent of the parties, direct that a conference take place where a party would become liable to remunerate a mediator;
- (b) by direction limit the time to be taken by a party in presenting its case.

(2) If under paragraph (1) (b) the Appeals Registrar imposes a time limit, the parties shall each file written submissions of not more than 20 pages, unless the Appeals Registrar directs otherwise.

(3) In deciding whether to make such a direction imposing a time limit, the Appeals Registrar shall have regard to these matters in addition to any other matters that may be relevant:

- (a) the complexity or simplicity of the appeal;
- (b) the state of the Court lists;
- (c) the time expected to be taken for the appeal; and
- (d) the importance of the issues and the case as a whole.

”.

Order 67 amended

26. Order 67 Rules 19, 20 and 21 of the principal rules are repealed.

Second Schedule amended

27. (1) The Second Schedule to the principal rules is amended by inserting after Form No. 18 the following Form —

“

O.29A, R.12

No. 18A

APPLICATION TO CASE MANAGEMENT REGISTRAR

(Heading as in cause or matter)

The [*party*] applies to a Case Management Registrar —

*for the following *interlocutory order(s)/*case management direction(s):

*to have the following case management direction(s) amended as follows:

*to have the following case management direction(s) cancelled:

- 1.
- 2.

The grounds for this application are:

- 1.
- 2.

Dated:

(Signed)

Applicant/Solicitor for applicant

To: [*all other parties*]

”.

(2) The Second Schedule to the principal rules is amended by deleting Form No. 22 and inserting the following Forms —

“

O.36, R.12

No. 21

WRIT OF SUBPOENA TO GIVE EVIDENCE

(ad testificandum)

(Heading as in cause or matter)

Elizabeth the Second, by the Grace of God, etc.

To: [*name and address of witness*]:

The Supreme Court orders you to appear personally to give evidence on behalf of the [*party*] —

- before the Supreme Court [*or as the case requires*];

- at [address];
- on [date] at [time], and every day after that until you are released by the Court.

Witness Chief Justice of Western Australia.

Issued on [date] by [agent / solicitor] for the [party].

O.36, R.12, 16A

No. 22

**WRIT OF SUBPOENA TO PRODUCE
DOCUMENTS OR OBJECTS
(*duces tecum*)**

(Heading as in cause or matter)

Elizabeth the Second, by the Grace of God, etc.

To: [name and address of witness]:

The Supreme Court orders you to appear personally —

- before the Supreme Court [or as the case requires];
- at [address];
- on [date] at [time], and every day after that until you are released by the Court,

and to bring with you and produce the following:

[describe documents or objects to be produced].

[Here include the terms of any order made under O. 36, r. 12 (4)]

Instead of appearing personally before the Court you can comply with this subpoena by giving the documents and objects described above and a written list describing them together with a copy of this subpoena to the Registrar at least 2 days before the above date. You can give them to the Registrar by hand or by post or any other means, provided that the Registrar receives them at least 2 days before the above date.

Witness Chief Justice of Western Australia.

Issued on [date] by [agent / solicitor] for the [party].

(3) The Second Schedule to the principal rules is amended by deleting Form No. 23.

Fifth Schedule amended

28. The Fifth Schedule to the principal rules is amended in item 1 (a) by inserting after “matter” the following —

“ , including filing a draft notice of appeal, ”.

Dated: 23rd day of October 1996.

Chief Justice’s signature

DAVID K. MALCOLM

Judges’ signatures:

W. P. PIDGEON
E. M. FRANKLYN
TERENCE A. WALSH
M. J. MURRAY
HENRY WALLWORK
N. J. OWEN
K. WHITE
GRAEME SCOTT
K. H. PARKER
A. J. TEMPLEMAN
C. D. STEYTLER

