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SUPREME COURT ACT 1935

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# **SUPREME COURT AMENDMENT RULES 2005**

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# **SUPREME COURT AMENDMENT RULES (No. 2) 2005**



## Supreme Court Act 1935

**Supreme Court Amendment Rules 2005**

Made by the Judges of the Supreme Court.

**1. Citation**

These rules are the *Supreme Court Amendment Rules 2005*.

**2. Commencement**

These rules come into operation on 2 May 2005 or on the day on which they are published in the *Gazette*, whichever is the later.

**3. The rules amended**

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

[\* *Reprint 6 as at 15 October 2004.*

*For amendments to 26 April 2005 see Gazette 19 April 2005.]*

**4. Interpretation**

In these rules, unless the contrary intention appears —

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

**5. Order 3 amended**

- (1) Order 3 rule 1 is amended by deleting “section 4 of the *Interpretation Act 1918*” and inserting instead —

“

the definition of the word “month” in section 5 of the *Interpretation Act 1984*

”.

- (2) Order 3 rule 5(4) is repealed.

**6. Order 31 amended**

- (1) Order 31 rule 8(1) is amended by deleting “or the Full Court”.

- (2) After Order 31 rule 8(1) the following subrule is inserted —

“

- (1a) This Rule does not apply to a case stated by a tribunal which is empowered or may be required to state a case

on a question of law for determination by or the opinion of the Court of Appeal.

”.

- (3) Order 31 rule 8(2) is amended by deleting “or the Full Court as the case may require”.
- (4) Order 31 rule 8(4) is amended by deleting “or the Full Court, as the case may be,”.
- (5) Order 31 rule 8(5) is amended by deleting “or Full Court”.
- (6) Order 31 rule 8(6) is amended by deleting “or the Full Court”.

**7. Order 34 amended**

Order 34 rule 14(2) and (3) are repealed.

**8. Order 55 amended**

Order 55 rule 2 is repealed and the following rule is inserted instead —

“

**2. Committal for contempt of court**

Subject to the Act, the power of the Court to punish for contempt of court may be exercised by an order of committal made by a Judge, or judge of appeal, sitting alone.

”.

**9. Order 60A amended**

- (1) Order 60A rule 3(4) is amended as follows:
  - (a) by inserting after paragraph (b) —  
“ or ”;
  - (b) by deleting paragraph (c) and “or” after it.
- (2) After Order 60A rule 6 the following rule is inserted —

“

**7. This Order not to apply to Court of Appeal Registrar**

This Order does not apply to or in respect of the Court of Appeal Registrar or any decision made by that Registrar.

”.

**10. Order 61 amended**

- (1) Order 61 rule 28(1) is amended by deleting “apply to the Full Court by motion and in accordance with the provisions of Order 63 for an order discharging or varying the certificate.” and inserting instead —

“

appeal to the Court of Appeal which may vary or discharge the certificate.

”.

- (2) Order 61 rule 28(2) is repealed and the following subrules are inserted instead —

“

- (2) An appeal under subrule (1) must be commenced and conducted in accordance with the *Supreme Court (Court of Appeal) Rules 2005*.
- (3) If the Master’s certificate is to be acted upon by the Accountant, a copy of the appeal notice filed under the *Supreme Court (Court of Appeal) Rules 2005* must be served on the Accountant as soon as practicable after it is filed.

”.

**11. Orders 63, 63A and 64 repealed**

Orders 63, 63A and 64 are repealed.

**12. Order 67 amended**

Order 67 rule 11(1)(b) is deleted and the following paragraphs are inserted instead —

“

- (b) any originating application made under the *Corporations Act 2001* of the Commonwealth;
- (ba) any appeal notice filed under the *Supreme Court (Court of Appeal) Rules 2005*;

”.

**13. Order 68 amended**

Order 68 rule 1(1) is amended by deleting “sittings of the Full Court and the”.

**14. Order 70 amended**

Order 70 rule 10A is repealed and the following rule is inserted instead —

“

**10A. Compromise of appeal by person under disability**

If a person under disability is a party to an appeal to the Court of Appeal, any settlement or compromise of the appeal is subject to the *Supreme Court (Court of Appeal) Rules 2005*.

”.

**15. Order 75A amended**

- (1) Order 75A rule 1 is amended as follows:
- (a) by inserting before “In this Order” the subrule designation “(1)”;

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

“

- (2) A term defined in the Act has the same meaning in this Order as it does in the Act, unless the contrary intention appears.

”.

- (2) Order 75A rule 2(1) is amended by deleting “Full Court” and inserting instead —

“ Supreme Court (Full Bench) ”.

**16. Order 76 amended**

- (1) Order 76 rule 2(1)(a) is amended by deleting “, pursuant to an order of the Full Court, under suspension from practice” and inserting instead —

“

a disqualified person as that term is defined in section 3 of that Act

”.

- (2) Order 76 rule 3(1) is amended by deleting “Full Court” and inserting instead —

“ Supreme Court (Full Bench) ”.

- (3) Order 76 rule 3(2) is amended by deleting “Full Court” and inserting instead —

“ Supreme Court (Full Bench) ”.

- (4) Order 76 rule 4(1) is amended by deleting “Full Court” and inserting instead —

“ Supreme Court (Full Bench) ”.

- (5) Order 76 rule 6(1) is amended by deleting “Full Court” and inserting instead —

“ Supreme Court (Full Bench) ”.

- (6) Form 93B is amended by deleting “Full Court” in the 2 places it occurs and in each place inserting instead —

“ Supreme Court (Full Bench) ”.

**17. Order 77 repealed**

Order 77 is repealed.

**18. Order 81D amended**

Order 81D rule 10 is repealed and the following rule is inserted instead —

“

**10. Appeals and questions of law**

The *Supreme Court (Court of Appeal) Rules 2005* apply to and in respect of —

- (a) an appeal, or an application for leave to appeal, under section 38; and
- (b) an application under section 40 to the Court for the determination of a question of law.

”

**19. Order 85 amended**

Order 85 rule 6(1)(b) is deleted and the following paragraph is inserted instead —

“

- (b) if the order sought is one that, had the judgment been one of a Judge or Master of the Supreme Court, could be made only by the Court of Appeal on an application for leave to appeal or on an appeal — by way of appellate proceedings to the Court of Appeal under the *Supreme Court (Court of Appeal) Rules 2005*.

”

**20. References to “Full Court” changed to “Court of Appeal”**

Each of the provisions listed in the Table to this rule is amended by deleting “Full Court” in each place it occurs and inserting instead —

“ Court of Appeal ”.

**Table**

Order 1 rule 7(2)(b)	Order 57 rule 1(1)	Order 66 rule 24(2)(b)
Order 31 rule 1(1)	Order 57 rule 2(1)	Order 70 rule 10(1)
Order 31 rule 7	Order 60 rule 3	Order 84 rule 3
Order 34 rule 17	Order 60A rule 6(2)	Second Schedule —
Order 56 rule 2	Order 61 rule 27(3)	Form No. 64
Order 56 rule 3		

Dated: 27 April 2005.

Judges' signatures:

DAVID K. MALCOLM, Chief Justice.

M. J. MURRAY

C. J. McLURE

N. J. OWEN

C. J. L. PULLIN

C. D. STEYTLER

E. M. HEENAN

C. A. WHEELER

M. L. BARKER

G. P. MILLER

R. L. LE MIERE

J. R. McKECHNIE

R. L. SIMMONDS

N. P. HASLUCK

P. D. BLAXELL

L. W. ROBERTS-SMITH

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## Supreme Court Act 1935

**Supreme Court Amendment Rules (No. 2) 2005**

Made by Judges of the Supreme Court.

**1. Citation**

These rules are the *Supreme Court Amendment Rules (No. 2) 2005*.

**2. Commencement**

These rules come into operation on 2 May 2005 or on the day on which they are published in the *Gazette*, whichever is the later.

**3. The rules amended**

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

[\* *Reprint 6 as at 15 October 2004.*

*For amendments to 26 April 2005 see Gazette 19 April 2005.]*

**4. Interpretation**

In these rules, unless the contrary intention appears —

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

**5. Order 56A inserted**

After Order 56 the following Order is inserted —

“

**Order 56A — Review orders under the  
*Magistrates Court Act 2004***

**1. Interpretation**

(1) In this Order —

“**review order**” means an order that may be made under section 36;

“**section**” means a section of the *Magistrates Court Act 2004*.

(2) A term defined in the *Magistrates Court Act 2004* has the same meaning in this Order as it has in that Act, unless the contrary intentions appears.

**2. Application for a review order, making**

- (1) An application to the Court for a review order —
  - (a) must be made *ex parte*;
  - (b) must be titled “In the matter of an application under the *Magistrates Court Act 2004* section 36 for a review order against [*name of the Court officer*], [*title of office held*] of the [*name of court*] at [*place*] EX PARTE [*name of applicant*], or as the case requires; and
  - (c) must be supported by an affidavit.
- (2) The application must be for an order that requires the Court officer, and any person who will be affected by the Court officer’s act, order or direction that is in question, to satisfy the Supreme Court at a hearing that the act, order or direction should or should not be done or made or set aside, as the case requires.

**3. Application for review order, procedure on**

- (1) An application for a review order shall be first listed before a Judge in chambers.
- (2) The Judge may —
  - (a) refuse the application;
  - (b) make a review order and order that it shall be heard by —
    - (i) a Judge in chambers or in court; or
    - (ii) the Court of Appeal;or
  - (c) make an order under section 36(5),and, unless the Judge acts under paragraph (b) or (c), may do any or all of the following —
  - (d) direct that the application be decided by a Judge sitting in court;
  - (e) direct that notice of the application be served on such persons as the Judge directs;
  - (f) adjourn the hearing of the application.
- (3) If a Judge makes a review order, whether under section 36(6) or on an application made under rule 2 —
  - (a) it may include an order as to who, apart from the Court officer named in the application, must be served with the review order;
  - (b) it must include an order as to how the review order must be served;
  - (c) it may include an order as to costs, and as to giving security for costs, or otherwise;

- (d) it may include an order that the review order operates as a stay of the proceedings in question until such time as the Court specifies in the order or orders otherwise.
- (4) If a review order is made that is to be heard by the Court of Appeal, the *Supreme Court (Court of Appeal) Rules 2005* apply in addition to this Order.

**3. Review order, service of**

If a review order is made, it must be served in the manner specified in the order on —

- (a) the registrar of the court at the place where the Court officer concerned was at the relevant time; and
- (b) any other person who the review order requires to be served,

at least 7 clear days before the hearing date set for the review order.

**4. Review order, hearing of**

- (1) At the hearing of a review order any person who wants to oppose the making of an order under section 36(4) or (5) is entitled to be heard, even if he or she has not been served with the review order.
- (2) The Court may order any person who is served with a review order, or who is heard at the hearing of a review order, to pay costs.
- (3) A person who wants to adduce affidavit evidence at the hearing of a review order must give reasonable notice of the fact to each other party.

**5. Final order, making and service of**

- (1) If the Court makes an order under section 36(4), the Court may include an order as to costs or may adjourn the question.
- (2) If the Court makes an order under section 36(4), the order must be served on —
  - (a) the Court officer concerned; and
  - (b) any other person who the Court orders to be served.

”.

**6. Order 60 amended**

Order 60 rule 1(1) is amended as follows:

- (a) by deleting paragraph (i);

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

“

(l) under section 20 of the *Criminal Appeals Act 2004*, and under and section 45 of that Act in an appeal to the General Division;

”.

(c) by deleting paragraph (o).

**7. Order 65 amended**

(1) Order 65 rule 1 is amended by deleting the definition of “tribunal” and inserting instead —

“

“**tribunal**” includes court, board, body and person.

”.

(2) Order 65 rule 2 is repealed and the following rule is inserted instead —

“

**2. Application of this Order**

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

”.

(3) Order 65 rule 6(1) is amended by deleting “(3) and (4)” and inserting instead —

“ and (3) ”.

(4) Order 65 rule 6(4) is repealed.

(5) Order 65 rule 6(5) is amended by deleting “(3) or (4)” and inserting instead —

“ or (3) ”.

(6) Order 65 rule 11(3) is repealed.

**8. Orders 65A and 65B repealed and Schedule 2 amended**

(1) Orders 65A and 65B are repealed.

(2) Forms 82A, 82AA and 82B are deleted.

**9. Order 66 amended**

(1) Order 66 rule 17(1) is amended by deleting “a Local Court” in the 2 places it occurs and in each place inserting instead —

“ the Magistrates Court ”.

(2) Order 66 rule 17(2) is amended by deleting “a Local Court” and inserting instead —

“ the Magistrates Court ”.

**10. Order 79 repealed and Order 32 and Schedule 2 amended**

- (1) Order 79 is repealed.
- (2) After Order 32 rule 7 the following rule is inserted —

“

**8. Trial by jury, precepts for etc.**

If an order for trial by jury is made, Part 13 of the *Criminal Procedure Rules 2005*, with any necessary changes, applies for the purposes of the *Juries Act 1957* and its application to the trial.

”.

- (3) Forms 95, 96, 97, 98 and 98A are deleted.

**11. Order 81 repealed and Schedule 2 amended**

- (1) Order 81 is repealed.
- (2) Form 101 is deleted.

**12. Order 84 amended**

Order 84 rule 8 is repealed.

**13. Schedule 2 amended**

- (1) Form 67 is amended as follows:
  - (a) by deleting “Stipendiary Magistrate”;
  - (b) by deleting “Court of Summary Jurisdiction at Perth” and inserting instead —  
“ [describe court] ”.
- (2) Form 68 is deleted.
- (3) Form 71 is amended as follows:
  - (a) by deleting “Magistrate of the Local Court holden at” and inserting instead —  
“ describe officer to whom the order is directed ”;
  - (b) by deleting “[entered a complaint against]” and inserting instead —  
“ [describe the action] ”;
  - (c) by deleting “[complaint]” and inserting instead —  
“ [action] ”.

Dated: 28 April 2005.

Judges' signatures:

DAVID K. MALCOLM, Chief Justice.

M. J. MURRAY (J)

C. J. McLURE (JA)

N. J. OWEN (JA)

C. J. L. PULLIN (JA)

C. D. STEYTLER (P)

M. L. BARKER (J)

C. A. WHEELER (JA)

R. L. LE MIERE (J)

G. P. MILLER (J)

C. F. JENKINS (J)

J. R. McKECHNIE (J)

R. L. SIMMONDS (J)

N. P. HASLUCK (J)

P. D. BLAXELL (J)

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