

Western Australia

## **District Court Rules 1996**

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## District Court Rules 1996

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Western Australia

District Court of Western Australia Act 1969

## **District Court Rules 1996**

## **Preliminary Order**

**1. Citation**

These rules may be cited as the *District Court Rules 1996*<sup>1</sup>.

**2. Commencement**

These rules come into operation on 31 March 1996.

**3. Repeals**

*[Omitted under the Reprints Act 1984 s.7(4)(f).]*



## **Order 1 — Case flow management**

### **1. Application**

The provisions of this Order and of Order 4 apply to any action commenced by Writ of Summons issued out of the Perth Registry of the District Court after 30 March 1996, or out of any other Registry after a date to be proclaimed in respect of that Registry by the Chief Judge.

*[Rule 1 amended in Gazette 6 December 1996 p.6726.]*

### **2. Timetables**

- (a) In order to achieve the goals stipulated in Order 1, Rules 4A and 4B of the *Rules of the Supreme Court 1971*, all actions shall be conducted in accordance with the following timetable, unless the Court otherwise orders:

	Maximum time from filing of appearance
Close of pleadings	60 days
Discovery of documents	103 days
Entry for trial	210 days
Pre-trial conference	270 days
Trial	400 days
Judgment	490 days

- (b) The timetable for any action involving multiple defendants shall commence to run upon the filing of the first appearance.
- (c) The trial Judge in any action may at any time extend the period for delivering judgment. Such period shall in any event be extended by such time between commencement and completion of trial as exceeds one day.

*[Rule 2 amended in Gazette 24 April 1997 p.2071.]*

**3. Requirements to be satisfied at time or pre-trial conference**

To these ends:

- (a) Each party to an action shall review the pleadings prior to the pre-trial conference so as to ensure their adequacy. Such steps as may be necessary to effect any amendments shall be taken prior to completion of the pre-trial conference;
- (b) Unless the justice of a case otherwise requires, the Court will refuse any application made subsequent to the pre-trial conference for leave to amend pleadings which if granted would necessitate an adjournment of the trial;
- (c) Each party shall be ready to proceed to trial by the date of the pre-trial conference;
- (d) Each party shall be ready to proceed with the hearing of any application at the time fixed for the hearing, or any adjourned hearing, of such application;
- (e) The trial date fixed will not be vacated or postponed unless the justice of the case, assessed having regard to the obligations of the parties pursuant to subrule (a), so requires.

**4. Summons for directions if timetable not met**

In the event that an action is not conducted in accordance with the timetable that applies pursuant to these Rules, the Court may issue a summons for directions to the parties returnable before a Registrar. At the hearing of such summons a Registrar may make the usual orders in respect of default, and may also order variations to the timetable.

**5. Variation of timetable**

- (a) The Court may vary the timetable for an action at any time by consent or at any interlocutory hearing or conference in the event that it appears, having regard to the nature of the

particular case, or for any other good cause, that the time allowed by the timetable should be varied.

- (b) Unless in any individual instance the justice of the case otherwise requires, any matter arising as a result of default, delay or neglect of a party shall not be regarded as a good cause for such variation.

*[Rule 5 amended in Gazette 11 August 2000 p.4693.]*

**6. Supreme Court Rules, Order 29 applies**

Save where inconsistent with this Order, the provisions of Order 29 of the *Rules of the Supreme Court 1971* shall continue to have effect.

**7. Supreme Court Rules, Order 29A does not apply**

The provisions of Order 29A of the *Rules of the Supreme Court 1971* shall not apply to proceedings commenced in the District Court.

*[Rule 7 inserted in Gazette 6 December 1996 p.6726.]*

**Order 1A — Facsimile lodgement and service of  
certain documents**

*[Heading inserted in Gazette 11 August 2000 p.4694.]*

**1. Filing or lodging by facsimile**

- (a) In addition to other prescribed modes of filing or lodgement, a document that is required to be filed or lodged in the Registry may be sent by facsimile in accordance with Rule 2.
- (b) A document that is more than 20 pages long (including any annexure or exhibit) may not be sent by facsimile transmission.
- (c) Where a document is sought to be filed or lodged in an existing proceeding it must be sent to an approved facsimile number for the Registry which is the proper place for the proceeding.

*[Rule 1 inserted in Gazette 11 August 2000 p.4694.]*

**2. Manner of filing or lodging by facsimile**

A document sent to a Registry by facsimile transmission must be:

- (a) sent to an approved facsimile number for the Registry;  
and
- (b) accompanied by a cover sheet stating:
  - (i) the sender's name, postal address, document exchange number (if any), telephone number and facsimile number;
  - (ii) the number of pages transmitted including the cover sheet;
  - (iii) what action is required of Registry Staff in relation to the document.

*[Rule 2 inserted in Gazette 11 August 2000 p.4694.]*

**3. Time of filing or lodging of facsimile documents**

A document sent by facsimile transmission is taken to have been filed:

- (a) if the whole document is received by 4.00 p.m. on the day when the Registry is open for business — on that day; and
- (b) otherwise — on the next day when the Registry is open for business.

*[Rule 3 inserted in Gazette 11 August 2000 p.4694.]*

**4. Approval of facsimile numbers**

The Principal Registrar must approve one facsimile number for each Registry of the Court for the purpose of receiving documents.

*[Rule 4 inserted in Gazette 11 August 2000 p.4694.]*

**5. Original document to be kept and produced if required**

- (a) A person who sends a document to a Registry by facsimile transmission must:
  - (i) keep the original document and the transmission report evidencing successful transmission; and
  - (ii) produce the original document and transmission report as directed by the Court.
- (b) If the Court directs that the original document be produced, the first page of the original document must be endorsed with:
  - (i) a statement that the document is the original of a document sent by facsimile transmission; and,
  - (ii) the date the document was sent by facsimile transmission.

*[Rule 5 inserted in Gazette 11 August 2000 p.4694.]*

**6. Personal service by facsimile**

In addition to other prescribed modes of service a document, other than a document that is required to be served personally, may be served by facsimile transmission in accordance with Rule 7.

*[Rule 6 inserted in Gazette 11 August 2000 p.4694.]*

**7. Other service by facsimile**

Where personal service of a document is not required, the document may be served by facsimile transmission directed to the facsimile transmission number operated at or in connection with, the address for service.

*[Rule 7 inserted in Gazette 11 August 2000 p.4694.]*

**8. Time of service of facsimile documents**

The time for service of any document shall, where the copy of the document is sent by facsimile transmission in accordance with Rule 7, be one day after the copy is transmitted excluding Saturdays, Sundays and Public Holidays.

*[Rule 8 inserted in Gazette 11 August 2000 p.4694.]*

## **Order 1B — Electronic transactions by and with the Court**

*[Heading inserted in Gazette 17 Dec 2004 p. 6077.]*

### **1. Certain documents may be lodged electronically**

- (1) This rule does not apply to lodging a document by fax.
- (2) The Principal Registrar is to publish a website address for the Court.
- (3) Subject to the requirements of the Court's website and this rule, a person may lodge a document electronically by lodging an electronic version of it by means of the Court's website.
- (4) If these rules of court or the *Rules of the Supreme Court 1971* require a document to be signed by a person who is not, or who is not acting on behalf of, the person lodging it, the document cannot be lodged electronically unless it is an affidavit.
- (5) If these rules of court or the *Rules of the Supreme Court 1971* require a document, before it is lodged, to be signed by or on behalf of the person lodging it and the document is being lodged electronically —
  - (a) the document need not be signed by that person; and
  - (b) the person lodging the document electronically must ensure that the electronic version of the document, instead of showing a signature at any place where a signature is required, states the name of the person whose signature is required at the place.
- (6) A person who lodges an affidavit electronically must —
  - (a) ensure that the electronic version of it, instead of showing a signature at any place where a signature appears in the paper version, states the name of the person whose signature it is; and
  - (b) lodge an undertaking that the person —

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- (i) has possession of the paper version signed according to law; and
  - (ii) will retain the paper version subject to any order of the Court.
- (7) A document lodged electronically at a registry is to be taken to have been lodged —
  - (a) if the whole document is received before 4.00 pm on a day when the registry is open for business, on that day;
  - (b) otherwise, on the next day when the registry is open for business.
- (8) A document that is sent electronically to a registry but not in accordance with the requirements of the Court's website and this rule is to be taken not to have been lodged at the registry.
- (9) The Court may at any time, on the application of a party or on its own initiative, order a person who has lodged a document electronically to lodge the paper version of the document.

*[Rule 1 inserted in Gazette 17 Dec 2004 p. 6077-8.]*

**2. Court's seal applied electronically, effect of**

If the Court issues a document in an electronic form that bears a facsimile of the Court's seal, the sealed document as it appears electronically, or as it appears when printed on paper, is to be taken to have the same effect as if the Court's seal had been lawfully applied to it by hand by an officer of the Court, unless there is evidence that the document was not issued by the Court.

*[Rule 2 inserted in Gazette 17 Dec 2004 p. 6079.]*



## **Order 2 — Discovery**

### **1. Discovery**

In any action commenced by writ:

- (a) each party shall give to each other party discovery of all documents which are or have been in the possession, custody or power of that party relating to any question therein;
- (b) with the consent of each other party such discovery may be by way of an informal list, but otherwise shall be by affidavit served on the other parties;
- (c) discovery shall be given within 75 days of an appearance being filed in the action, and the documents discovered shall be made available for inspection within 14 days thereafter;
- (d) within 14 days of complying with subrule (c), each party shall file a certificate (in the prescribed form) to that effect;
- (e) the Court may at any time order a variation of the times set out in subrules (b) and (c).

### **2. Supreme Court Rules, Order 26 applies**

Save where inconsistent with this Order, Order 26 of the *Rules of the Supreme Court 1971* shall continue to have effect.

## **Order 3 — Interrogatories**

### **1. Leave generally required to administer interrogatories**

Subject to Rule 2, interrogatories may only be administered with the leave of the Court.

### **2. Situations where leave not required**

Leave to administer interrogatories shall not be necessary when the party required to answer the same consents to do so, or when:

- (a) the action involves a claim for personal injury, and
- (b) the interrogatories are administered within 110 days of an appearance being filed, and
- (c) the interrogatories relate to:
  - (i) the occurrence of the accident pleaded;
  - (ii) the defendant's system for preventing accidents of the type alleged to have occurred;
  - (iii) the plaintiff's medical history for 5 years prior to the accident;
  - (iv) the symptoms and treatment of the injury in question;
  - (v) the plaintiff's employment history for 5 years prior to the accident.

### **3. No late interrogatories if adjournment likely**

Unless the justice of the case otherwise requires, the Court will refuse any application made subsequent to the pre-trial conference for leave to administer interrogatories which if granted would necessitate an adjournment of the trial.

### **4. Minute of proposed interrogatories to be filed**

A minute of proposed interrogatories the subject of any application for leave must be filed and a copy served on the

respondent no later than 7 days prior to the application being heard.

**5. Supreme Court Rules, Order 27 applies**

Save where inconsistent with this Order, Order 27 of the *Rules of the Supreme Court 1971* shall continue to have effect.

## **Order 4 — Entry for trial**

**1. Supreme Court Rules, Order 33 does not apply**

Order 33 of the *Rules of the Supreme Court 1971* shall no longer have effect.

**2. Notice of entry for trial**

In any action commenced by writ:

- (a) Each party other than the plaintiff shall within 200 days of an appearance being filed, notify the plaintiff of any dates on which that party is unavailable to attend a pre-trial conference. A party that does not so notify the plaintiff shall be deemed to be available on any date;
- (b) The plaintiff shall within 210 days of an appearance being filed, file a notice of entry for trial in the prescribed form. Such notice shall specify the dates on which any party is unavailable to attend the pre-trial conference;
- (c) In the event of the plaintiff failing to comply with subrule (b) any other party may file the notice, whereupon:
  - (i) The plaintiff shall be deemed to be available to attend the pre-trial conference on any date (unless notice to the contrary is filed prior to listing of the pre-trial conference).
  - (ii) The parties shall be relieved of the obligation to attend on the return date of any summons for directions issued (pursuant to Order 1, Rule 4) in respect of the plaintiff's non-compliance with subrule (b).

**3. Judge's Papers to be filed**

The party filing a notice of entry for trial shall at the same time file one set of Papers for the Judge comprising:

- (a) the pleadings and any affidavits ordered to stand as pleadings (which pleadings are to be clear copies of the pleadings as amended);
- (b) any request or order for particulars, and the particulars given;
- (c) any order for directions made under Order 19, Rule 4, of the *Rules of the Supreme Court 1971*; and
- (d) where an issue in the action is being entered, any order relating to the trial of that issue.

**4. Notice and Judge's Papers to be served**

The party filing a notice of entry for trial shall within 7 days thereafter serve a copy of the notice and of the Papers for the Judge on each other party to the action.

**5. Court may vary time for notice**

The Court may at any time make orders varying the times stipulated in Rule 2.

## **Order 5 — Case management following entry for trial**

*[Heading inserted in Gazette 6 December 1996 p.6726.]*

### **1. Schedule of damages**

- (1) No later than 14 days prior to a pre-trial conference the plaintiff shall file and serve a single schedule setting out calculations and/or particulars quantifying or justifying the following items of damages (if the same are claimed):
  - (i) Past loss of earning capacity.
  - (ii) Future loss of earning capacity.
  - (iii) Special damages.
  - (iv) Future medical expense and/or care.
  - (v) Past and future gratuitous services.
  - (vi) Special appliances or services.
  - (vii) Any other discrete item of damages.
- (2) The schedule filed and served pursuant to subrule (1) shall be consistent with the plaintiff's pleadings.

*[Rule 1 inserted in Gazette 6 December 1996 p.6726; amended in Gazette 11 August 2000 p.4694.]*

### **2. Pre-trial conference**

After an action has been entered for trial the parties are required to attend a pre-trial conference, unless —

- (a) Judgment is entered prior to the pre-trial conference being held and no issue remains in the action other than costs.
- (b) A Judge or Registrar orders that the pre-trial conference be dispensed with, or
- (c) The action falls within a class of actions which the Chief Judge directs is not subject to this Order.

*[Rule 2 inserted in Gazette 6 December 1996 p.6726.]*

**3. Exchange of expert reports**

- (1) In this Rule “**report**” means a medical report or a report of an expert within the meaning of Order 36A of the *Rules of the Supreme Court 1971*.
- (2) Unless the Registrar directs otherwise, a party must serve on the other party, at least 14 days before the date fixed for a pre-trial conference, the substance of every report which that party intends to rely on at trial which is then in the hands of that party or his or her solicitor.

*[Rule 3 inserted in Gazette 6 December 1996 p.6726.]*

**4. Parties must attend in person**

- (1) Unless the Registrar orders otherwise a party must attend a pre-trial conference in person or, if a body corporate, by an authorised officer.
- (2) Where an action is being litigated on behalf of a party by an insurer, subrule (1) may be satisfied by the attendance of an authorised officer of that insurer.
- (3) Subject to subrule (1), a party may be represented at pre-trial conference by counsel or a solicitor

*[Rule 4 inserted in Gazette 6 December 1996 p.6726.]*

**5. Procedure at pre-trial conference**

- (1) Unless a Judge otherwise orders, a pre-trial conference shall be held before the Registrar and in accordance with any directions that the Registrar may make.
- (2) The parties attending a pre-trial conference must make a bona fide attempt to reach agreement on the matters in dispute between them.
- (3) A pre-trial conference may be adjourned from time to time.

*[Rule 5 inserted in Gazette 6 December 1996 p.6726.]*

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**6. Negotiations to be without prejudice**

- (1) Subject to subrule (2), evidence of anything said or any admission made in the course of a pre-trial conference is not admissible at the trial of the action.
- (2) Subrule (1) does not apply to —
  - (a) the trial of a person for an offence alleged to have been committed at a pre-trial conference;
  - (b) the hearing of an application for costs arising out of a pre-trial conference; or
  - (c) anything said or admitted which all parties to the pre-trial conference agree may be admitted in evidence at the trial and which the Registrar records in writing as having been so agreed.

*[Rule 6 inserted in Gazette 6 December 1996 p.6726.]*

**7. Actions settled**

- (1) When a compromise is reached at a pre-trial conference —
  - (a) the parties and their counsel or solicitors shall sign and file a written consent to the making of an order giving effect to the compromise; and
  - (b) unless the approval of a Judge is required, judgment shall be entered at the pre-trial conference.
- (2) When the approval of a Judge to a compromise is required the Registrar shall cause a date to be fixed for the matter to be brought before a Judge in chambers and the plaintiff's solicitors shall issue a summons returnable on that date.



- (3) When the requirement of personal attendance by a party is dispensed with or is satisfied by the attendance of an authorised officer of an insurer, subrule (1)(a) is satisfied by the signing of a consent by the counsel or solicitor representing the party and, if an authorised officer of an insurer is in attendance, by that officer.

*[Rule 7 inserted in Gazette 6 December 1996 p.6727.]*

**8. Actions not settled**

- (1) When a pre-trial conference does not result in compromise the Registrar shall adjourn the action to a listing conference and make orders or directions which may include the following —
- (a) Within 14 days the plaintiff shall file and serve —
    - (i) A chronology of relevant events.
    - (ii) A concise statement of the issues of fact and law which the plaintiff contends will need to be determined at trial (which in respect of actions concerning building or engineering disputes shall be in the form of a *Scott Schedule*).
    - (iii) An index of the reports of any expert witness(es) that the plaintiff intends to call at trial.
  - (b) Within 14 days of service of such documents the defendant shall file and serve —
    - (i) The defendant's chronology of relevant events.
    - (ii) A concise statement of the issues of fact and law that the defendant contends will need to be determined at trial.
    - (iii) An index of the reports of any expert witness(es) that the defendant intends to call at trial.
  - (c) Any other order or direction that may be appropriate pursuant to Order 29 Rule 2 of the *Rules of the Supreme Court 1971* (whether on the application of a party or of the Court's own motion).

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- (d) Orders or directions providing for the pre-trial supervision of the action by a Judge.
- (2) Chronologies and statements of issues filed and served pursuant to subrule (1) shall be consistent with the pleadings of the party providing the same.
- (3) A party complying with the orders or directions is not obliged to disclose an event or issue that is primarily relevant to the credibility of the opposing party (or its principal witnesses).
- (4) In the event of a party failing to comply with any of the orders or directions, any other party to the action may apply to a Registrar for appropriate orders in default.
- (5) The Registrar may dispense with the requirements of subrule (1) and immediately fix dates for trial, when satisfied that all of the following circumstances apply —
  - (a) Counsel who will appear at trial have been fully briefed and have advised their respective clients as to the prospects at trial.
  - (b) The parties have made reasonable efforts to agree on —
    - (i) facts not the subject of real controversy; and
    - (ii) the tender of expert reports without need of the expert being called.
  - (c) Reliable estimates have been made as to the probable length of trial.
  - (d) No useful purpose would be served by orders and directions pursuant to subrule (1).

*[Rule 8 inserted in Gazette 6 December 1996 p.6727.]*

**9. Listing conference**

- (1) A listing conference shall be conducted by the Registrar, and subject to subrule (2), shall be attended by counsel who are to appear at trial.

- (2) A counsel to whom subrule (1) applies need not attend a listing conference if his or her instructing solicitor attends and tenders a certificate from that counsel as to the following matters —
- (a) The estimated length of trial.
  - (b) The number of witnesses that his or her party intends to call.
  - (c) Whether there are any special circumstances affecting the date or time at which any particular witness can be called.
  - (d) Whether any particular witness will be attending from a long distance or from outside the jurisdiction.
  - (e) That the parties have made reasonable efforts to reach agreement on —
    - (i) facts not the subject of real controversy; and
    - (ii) the tender of expert reports without need of experts being called.
- (3) No action shall be listed for trial until all orders and directions previously made have been complied with or appropriate default orders have been made.

*[Rule 9 inserted in Gazette 6 December 1996 pp.6727-8.]*

**10. Interlocutory applications subsequent to listing for trial**

Any interlocutory application that may result in adjournment of a trial will only be granted upon special circumstances being shown by affidavit.

*[Rule 10 inserted in Gazette 6 December 1996 p.6728.]*

**11. Costs**

- (1) The Registrar at pre-trial conference or at listing conference may make any orders for costs as though sitting in chambers.

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- (2) When an action is compromised the Registrar may make all necessary orders as to costs including orders —
- (a) Awarding costs reserved.
  - (b) Awarding costs of interrogatories.

*[Rule 11 inserted in Gazette 6 December 1996 p.6728.]*

**12. The Registrar**

In this Order the expression “**the Registrar**” includes the Principal Registrar, each Registrar, and any Deputy Registrar designated for the purposes of this Order by the Chief Judge.

*[Rule 12 inserted in Gazette 6 December 1996 p.6728.]*

## **Order 6 — Jurisdiction of Registrars**

### **1. Registrars**

In this Order the expression “**a Registrar**” means a Registrar to whom section 53 of the *District Court of Western Australia Act 1969* applies.

### **2. Powers of Registrars**

Subject to this Order, a Registrar may transact all such business, and exercise all such authority and jurisdiction in respect of the same as under the *District Court of Western Australia Act 1969* or the rules applicable to the Court may be transacted or exercised by a Judge at chambers, except in respect of the following proceedings and matters, that is to say:

- (a) proceedings on the Crown side of the Court, and all matters relating to criminal proceedings or to the liberty of the subject;
- (b) injunctions and other orders under section 25(9) of the *Supreme Court Act 1935* other than orders for the appointment of receivers by way of equitable execution and injunctions so far, and so far only, as the same are ancillary or incidental to equitable execution and charging orders;
- (c) reviewing taxation of costs;
- (d) proceedings in which an originating summons raises for the determination of the Court a question as to the construction of a statute or document or a question of law or a question arising out of or connected with a contract between a vendor or purchaser of land or an interest in land;
- (e) such business, authority, and jurisdiction as the Chief Judge may from time to time direct to be transacted or exercised by a Judge in person or as may by the rules applicable to the Court be expressly directed to be transacted or exercised by a Judge in person.

**3. Registrars may take accounts and make inquiries**

- (1) Without prejudice to the power, authority and jurisdiction conferred on a Registrar by Rule 2, the Court may, in any proceedings pending before it, order that an account be taken or that an inquiry be made by a Registrar or other proper officer; and the Court shall give such aid and directions in every such account or inquiry as it may think fit.
- (2) On the taking of any accounts or the making of any inquiries, any party shall have the right to have an adjournment from a Registrar to a Judge in person without any further summons for that purpose.

**4. When matters within Registrar's jurisdiction may be brought before Judge**

A matter or proceeding that is authorised by or under these Rules to be heard and determined by a Registrar shall not be brought before a Judge except —

- (a) on a reference by a Registrar under Rule 5; or
- (b) on an appeal under Rule 11; or
- (c) by leave of a Judge.

**5. Reference by a Registrar to a Judge**

- (1) A Registrar may refer any application or matter to a Judge and the Judge may either dispose of the application or matter or refer it back to a Registrar with such directions as he or she may think fit.
- (2) Pending the final disposal of the application or matter a Registrar may make such interim order as he or she shall think fit.

**6. Office of Registrar deemed Judge's chambers**

The office of a Registrar shall be deemed to be Judge's chambers for the purpose of any matter which is authorised by

or under these Rules to be dealt with by a Registrar, and in respect of such matters references in this Order to the Court shall be deemed to be references also to a Registrar.

**7. Power to seal consent orders**

- (1) Where in relation to —
- (a) proceedings in respect of which a Registrar presides over a pre-trial conference; or
  - (b) a matter arising from proceedings which is within the jurisdiction of a Registrar under the Act or the rules applicable to the Court,

the parties to the proceedings or their solicitors file or tender a written consent to the making of an order in the proceedings or the matter a Registrar may, without referring the matter to or bringing it before a Judge and without any other application, settle, sign and seal an order in accordance with the terms of the consent.

- (2) It must be stated in the order referred to in subrule (1) that it is made by consent.
- (3) An order made in accordance with the requirements of subrules (1) and (2) has the same force and validity as if it had been made after a hearing by the Court.

**8. Power to issue advertisements and summon witnesses**

A Registrar shall, for the purpose of any proceedings directed to be taken before a Registrar, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits and acknowledgments, and to examine parties and witnesses either upon interrogatories or viva voce.

**9. Duty of persons summoned to attend**

Parties and witnesses summoned to attend before a Registrar shall be bound to attend in pursuance of the summons, and shall

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be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the Court, or in case of default in attendance, in pursuance of any order of the Court or of any writ of *subpoena ad testificandum*, and all persons swearing or affirming before a Registrar shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming as if the matter sworn or affirmed had been sworn or affirmed before any other person by law authorised to administer oaths, to take affidavits, and to receive affirmations.

**10. Interest and apportionment**

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

**11. Appeal from a Registrar**

- (1) A person affected by a judgment, order or decision of a Registrar may appeal therefrom to a Judge in chambers.
- (2) Such appeal shall be by notice in writing to attend before a Judge without a fresh summons, such notice to be given within 5 days after the decision complained of or such further time as may be allowed by a Judge or by a Registrar.
- (3)
  - (a) This subrule applies to actions in the Perth Registry;
  - (b) Within 30 days of an appeal being commenced pursuant to this Rule the appellant shall request the Court to list the appeal before a Registrar for a directions hearing and the provisions of Order 8 Rule 18 shall apply *mutatis mutandis* to that hearing;
  - (c) The appellant shall give not less than 7 days notice of the date fixed for the directions hearing to each other party to the appeal;



- (d) In the event the appellant does not comply with (a) above then any other party to the appeal may:
  - (i) apply to strike out the appeal; or
  - (ii) request the Court to list the appeal for directions.
- (4) Unless otherwise ordered there shall be at least 2 clear days between service of the notice of appeal and the day of hearing.
- (5) An appeal from the decision of a Registrar shall not operate as a stay of proceedings unless so ordered by a Judge or a Registrar.  
*[Rule 11 amended in Gazette 11 August 2000 p.4694.]*

## **Order 7 — Applications under the *Misuse of Drugs Act 1981***

### **1. Interpretation**

In this Order unless the contrary intention appears —

**“the Act”** means the *Misuse of Drugs Act 1981*;

**“the respondent”** means:

- (a) in the case of an application under section 18 of the Act by the possessor of property, the police officer to whom the embargo notice has been granted;
- (b) in the case of an application under section 19 of the Act —
  - (i) by the police officer to whom a holding order or an embargo notice has been granted, the possessor of the property;
  - (ii) by a person aggrieved, the police officer to whom a holding order or an embargo notice has been granted;
- (c) in the case of an application under section 28(3) of the Act —
  - (i) by the claimant, the Crown Prosecutor;
  - (ii) by any other person, the claimant.

### **2. Application by notice of motion**

- (1) An application under section 18 of the Act or under section 19 of the Act shall, and an application under section 28(3) of the Act may, be made to the Court by filing a notice of motion.
- (2) The motion shall be made returnable in open court at such sittings as the Court directs, and shall be heard on such date as is fixed in accordance with this Order and with the practice of the Court by the proper officer.

**3. Filing and service of notice of motion and affidavits**

In the case of each application by notice of motion —

- (a) the notice shall set out clearly and concisely the grounds upon which the application is made and shall state an address for service;
- (b) the date fixed for the hearing of the application shall not be less than 21 clear days after the day the notice of motion is filed unless —
  - (i) the respondent consents, in writing, to the hearing being held within that period and that consent is filed with the notice of motion; or
  - (ii) the Court orders that the hearing be held within that period;
- (c) as soon as practicable after the date for hearing has been fixed by the proper officer the applicant shall give notice thereof to the respondent;
- (d) at the time when the notice of motion is filed or within 7 days thereafter there shall be filed an affidavit by the applicant, together with such further affidavit or affidavits as shall be necessary, setting out the facts relied on to support the application;
- (e) as soon as practicable after each is filed the applicant shall effect personal service of a copy of the notice of motion and of each affidavit on the respondent who shall —
  - (i) be entitled to be heard on the application and to file affidavits in answer to those filed in support of the application;
  - (ii) if intending to be heard on the application, file in the appropriate Registry a notice to that effect on which shall be endorsed an address for service;
  - (iii) serve on the applicant a copy of the notice of intention to be heard and of each answering

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affidavit on the day it is filed or as soon as practicable thereafter;

- (f) when the respondent is a police officer service may be effected on the Crown Prosecutor.

**4. Further parties**

If it appears at any stage of the proceedings that any other person has an interest in the property, the Court may order that such person be made a party to the proceedings in addition to or in lieu of another party. An application for such an order may be made ex parte.

**5. Deponent to be produced for cross examination**

When an affidavit has been filed, the party on whose behalf the affidavit was filed shall cause the deponent to attend for cross examination if so required by the Court or by another party, and if the deponent does not so attend the affidavit shall not be used as evidence except by special leave of the Court.

**6. Evidence**

- (1) Where a party to the proceedings has been convicted after trial, the Court may have regard to the evidence given at the trial but, by leave of the Court, such evidence may be supplemented by further oral evidence or by affidavit.
- (2) Where a party to the proceedings has been convicted on his own confession the Court may have regard to the depositions of witnesses taken at any preliminary hearing and to the written statements tendered in evidence by the prosecution under section 29 of the *Justices Act 1902* and may take such further or other evidence as the circumstances of the case require.

## **Order 8 — Appeals to the District Court**

### **1. Interpretation**

In these Rules, subject to the context, “**Court**” includes a “**Judge**”, and a “**judgment**” includes reasons for judgment.

### **2. Notice of appeal**

An appeal from a judgment of a Local Court shall be instituted by notice of motion (hereinafter called a “**notice of appeal**”) filed in the Registry of the Court situated nearest to the Local Court in which that judgment was given, and unless the parties otherwise agree shall be by way of rehearing.

### **3. Contents of notice of appeal**

The notice of appeal shall identify the action or matter resulting in the judgment and shall contain —

- (1) particulars of the judgment or that part of the judgment against which the appeal is made;
- (2) a statement of the grounds of appeal on which the appellant intends to rely;
- (3) the precise form of order sought by the appellant; and
- (4) an address for service of the appellant within 3 kilometres of the Registry in which the notice is filed.

### **4. Notice to be specific**

Without affecting the specific provisions of Rule 3 it is not sufficient to allege that a judgment or order is against the evidence or the weight of evidence or that it is wrong in law; the notice must specify the particulars relied on to demonstrate that it is against the evidence or the weight of evidence and the specific reasons why it is alleged to be wrong in law.

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**5. Notice to be filed and served within 21 days**

The notice of appeal shall be filed and served on all parties directly affected by the appeal and on the Clerk of the Local Court in which the judgment was given within 21 days of that judgment or within such further time as a Judge or Registrar shall allow.

*[Rule 5 amended in Gazette 6 December 1996 p.6728.]*

**6. Security to be paid**

Security in the sum of \$100 to answer the costs of the appeal in the event of the appellant being unsuccessful shall be paid into the Registry by the appellant when the notice of appeal is filed.

**7. Notice of intention to appear**

Within 10 days of service of a notice of appeal on a party that party if intending to appear as a respondent in the appeal shall file in the appropriate Registry a notice of intention to appear containing an address for service within 3 kilometres of that Registry and within that time serve a copy of that notice of intention on the appellant.

**8. When an answer is to be filed and served**

If a respondent desires to cross-appeal or to seek a variation of the judgment from which an appeal is made or to seek to support that judgment on grounds other than the grounds relied on by the court which gave it, that respondent shall, within 14 days of filing and serving a notice of intention to appear, file an answer and serve it on the appellant and on all other parties directly affected thereby.

**9. Contents of answer**

The answer referred to in Rule 8 shall contain —

- (1) particulars of the judgment or that part of the judgment against which the cross-appeal is made;

- (2) a statement of the grounds on which the respondent intends to rely on the cross-appeal;
- (3) a statement of the grounds on which the respondent seeks a variation of the judgment; or
- (4) a statement of the grounds on which the respondent intends to rely other than the grounds relied on by the court which gave the judgment,

as may be appropriate.

**10. Security for cross-appeal or variation**

Where a respondent to an appeal desires to file an answer of the nature referred to in Rule 9(1), (2) or (3) he or she when filing the answer shall pay into the Registry the sum of \$100 by way of security for costs in respect of the cross-appeal or variation sought.

**11. All grounds to be included in notice of appeal or answer**

Except by leave of a Judge a party is not entitled at the hearing of the appeal to seek any relief or rely on any ground not sought or set out in the notice of appeal or answer, as the case may be.

**12. Judge may move an appeal to another Registry**

An appeal may be removed by a Judge upon good cause shown and upon such terms as he or she thinks fit, from the Registry in which the notice of appeal is filed to another Registry of the Court.

**13. Where documents are to be filed**

Upon a notice of appeal being filed all subsequent documents required to be filed pursuant to these Rules shall be filed in the Registry in which the notice of appeal is filed, or, where an order has been made for the removal of an appeal to another Registry, then in the latter Registry.

**14. Registrar to get Local Court details for appeal**

When an appeal has been instituted the Clerk of the Local Court in which the judgment was given shall forthwith on request being made by the Registrar or Deputy Registrar, as the case may be, of the Registry in which the appeal is instituted, transmit to that Registry —

- (1) the particulars of claim, the particulars of defence (if any), and other documents (not being exhibits) that were before the Local Court in the proceeding out of which the appeal arises, or certified copies thereof;
- (2) a certified copy of the magistrate's notes of evidence and addresses of counsel;
- (3) a certified statement of the judgment against which the appeal is made; and
- (4) a list of the exhibits adduced in evidence and, so far as is practicable, the original exhibits.

**15. Copies of documents to be available**

When an appeal has been instituted any party shall be entitled on payment of the proper fee to obtain from the Clerk of the Local Court in which the judgment was given or from the appropriate Registrar or Deputy Registrar as the case may be a copy of any document referred to in Rule 14(1), (2), (3) or (4).

**16. When appellant can enter an appeal for hearing**

An appeal may be entered for hearing by the appellant —

- (1) if no respondent has filed a notice of intention to appear, within 30 days of the service of the notice of appeal on the respondent last served;
- (2) if no answer is filed, within 30 days of service of the copy notice of intention to appear; or
- (3) if an answer is filed, within 30 days of service of the answer.



**17. When respondent can enter an appeal for hearing**

When an answer is filed and the appellant fails to enter the appeal for hearing within 30 days of service of the answer the respondent who has filed that answer may enter the appeal for hearing.

**18. Appeals in Perth Registry to be listed for directions**

- (1) This Rule applies to appeals in the Perth Registry.
- (2) Upon an appeal being entered for hearing it shall be listed for directions before a Registrar who shall have the power to make such directions as are necessary or desirable for the efficient conduct of the appeal including:
  - (a) granting leave to amend the grounds of appeal or cross-appeal;
  - (b) varying the time fixed by these Rules for the doing of any act or filing of any document;
  - (c) directing the manner in which the material necessary to determine the appeal shall be presented including ordering the filing of appeal books;
  - (d) fixing time limits to undertake steps in the appeal including interlocutory applications for leave to adduce fresh evidence and any matter referred to under Rule 21;
  - (e) fixing the date, time and duration of the hearing.
- (3) The party entering an appeal for hearing shall give not less than 7 days notice of the date fixed for the directions hearing to all other parties to the appeal.

*[Rule 18 inserted in Gazette 11 August 2000 pp.4694-5.]*

**19. Change of venue**

An appeal that is to be heard at a place other than Perth may be entered for hearing at the civil sittings of the Court at that place next occurring one calendar month after the entry by filing an entry for hearing and serving it on all other parties affected within 7 days of filing.

**20. Orders that a Judge may make**

A Judge may on such terms as he or she thinks fit upon application or on the Judge's own motion order:

- (1) that the time within which a person is required or authorised to do any act under this order be extended or abridged, notwithstanding that when such application is made the time for doing that act has expired;
- (2) a stay of execution of a judgment against which a notice of appeal has been filed or against which he or she is satisfied a party intends to appeal;
- (3) the amendment of the notice of appeal or of an answer, whether before or during the hearing of the appeal;
- (4) that a notice of appeal or an answer be struck out, whether in whole or in part;
- (5) that the hearing of an appeal be adjourned or be heard before the Court sitting at a place other than the place where the appeal was instituted;
- (6) the discontinuance by a person under a disability of an appeal or answer and the consent by such person to a discontinuance;
- (7) the payment of costs of an appeal discontinued under Rule 22 or Rule 24 and, in default of agreement, the disposal of moneys paid into Court as security for costs;
- (8) the consolidation of one appeal with another appeal;
- (9) that the notice of appeal or answer be served on any party to the proceeding in the Court below or on any party not a party to the appeal;
- (10) substituted service of any document required to be served;
- (11) the dismissal of an appeal for want of prosecution; or
- (12) the acceptance or rejection of evidence by affidavit.

**21. Notice of discontinuance without leave**

Subject to Rule 24 where no respondent has filed an answer by way of cross-appeal or seeking a variation of the judgment against which an appeal is made, the appellant may, at any time before the hearing, by filing a notice of discontinuance and serving a copy on the respondent or respondents, discontinue the appeal without leave. In such case, unless there is an agreement to the contrary between the parties to the appeal, the appellant shall pay the costs of the respondent or respondents to the date of discontinuance of the appeal, such costs to be taxed if not agreed.

**22. Notice of discontinuance by consent**

Subject to Rule 24, where a respondent has filed an answer either by way of cross-appeal or by seeking a variation of the judgment against which the appeal is made, the appellant may, at any time before the hearing, with the consent of each respondent who has filed an answer, discontinue the appeal by filing a notice of discontinuance endorsed with that consent or those consents. In such case unless there is an agreement to the contrary between the parties, or a Judge otherwise orders, the appellant shall pay the costs of the respondent or respondents to the date of discontinuance of the appeal, such costs to be taxed if not agreed. The provisions of this Rule apply, *mutatis mutandis*, to the discontinuance by a respondent of a cross-appeal or an answer seeking a variation of the judgment.

**23. Costs on discontinuance**

Subject to Rule 24, upon discontinuance of an appeal, moneys paid into Court as security for costs shall be paid out of Court in accordance with a memorandum of agreement signed by the parties, or, in default of agreement, as directed by the order of a Judge.

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**24. Discontinuance where a party is under a disability**

A party to an appeal who is under a disability may not discontinue an appeal or answer or consent to the discontinuance of an appeal or answer without leave of a Judge, who may make such order as he or she deems fit in the circumstances including orders as to costs and the disposal of moneys paid into Court.

**25. Costs of an appeal**

On the determination of an appeal by the Court the Judge hearing the appeal may fix the costs of the appeal.

**26. Registrar, etc., to settle judgments and orders**

Judgments and orders given or made in an appeal may be entered by any party and shall then be settled by the Registrar, Deputy Registrar or other officer to whom such duty may be assigned, authenticated by the signature of the Registrar or Deputy Registrar and sealed with the seal of the Court.

**27. Local Court to be notified of appeal outcome**

When an appeal to which these Rules apply has been determined by the Court, the Registrar of the Court or the Deputy Registrar of the Court at the place where the Court hears the appeal, as the case may be, shall transmit to the Clerk of the Local Court from which the appeal was brought a copy of the order of the Court on the appeal and a copy of the reasons given by the Court for the determination.

**28. Form of appeal documents**

- (1) Every document prepared by a party for use in an appeal shall be legibly and clearly typewritten, have a space of not less than 6 millimetres between each line, be on white paper of good quality, be typewritten upon one side only of the paper, with a quarter margin on the left hand side of each sheet and have each page numbered.

- (2) Every document prepared by a party for filing pursuant to these Rules shall be signed by such party or his solicitor.
- (3) The Registrar or Deputy Registrar may refuse to file or accept a document to which this Rule applies if it does not comply with the provisions of this Rule and the costs of that document may be disallowed upon discretion.

**29. Application of these Rules to other appeals**

- (1) In addition to an appeal from the Local Court and subject to the enabling legislation these Rules shall apply mutatis mutandis to an appeal and to an application for leave to appeal to the Court from any court, tribunal or authority where a right of appeal to the Court is given by law now or in the future.
- (2) In an appeal to which this Rule applies —
  - (i) a reference to a “**judgment**” in these Rules includes a judgment decision finding determination or award of the court, tribunal or authority appealed from;
  - (ii) a reference to the “**Clerk of the Local Court**” in these Rules means the chief administrative officer of the court, tribunal or authority appealed from; and
  - (iii) a reference to “**a magistrate**” in these Rules means the presiding official of the court, tribunal or authority appealed from.

*[Rule 29 amended in Gazette 6 December 1996 p.6728.]*

**30. Powers of Court on appeal**

- (1) On appeal to the Court a party may, on special grounds only, apply to the Court for special leave to adduce further evidence on questions of fact either by oral examination or by affidavit and the Court has full discretionary power to grant such leave; and
- (2) On the hearing of an appeal the Court has power to affirm, reverse or modify the judgment appealed from and to give or make such judgment, order, decision, determination or award as

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ought to have been given or made in the first instance and to review any finding of fact and to draw inferences of fact and may order a new trial or hearing on such terms as the Court shall think just or make any other order on such terms as the Court thinks proper to ensure the determination on the merits of the real questions in controversy between the parties or the real merits of an application and may make such order as to costs as it shall think just.

**31. Costs**

- (1) The costs of and incidental to an appeal shall be in the discretion of the Court and, subject to Rule 25, taxed in accordance with any scale regulating the remuneration of practitioners admitted to practice under the Legal Practitioners Act in and for the purposes of proceedings before the Court.

*[(2) repealed]*

*[Rule 31 amended in Gazette 27 July 2001 p. 3903.]*

**Schedule**

*[Schedule Scale of Fees repealed in Gazette 27 Jul 2001 p. 3903.]*

**Schedule**

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**Schedule of Prescribed Forms**

**Form 1**

(Order 2 Rule 1(e))

IN THE DISTRICT COURT )  
OF WESTERN AUSTRALIA )  
HELD AT PERTH )

No \_\_\_\_\_ of 20\_\_.

Between:

Plaintiff

and

Defendant

CERTIFICATE OF DISCOVERY

DATE OF CERTIFICATE	
PARTY CERTIFYING	
FILED BY	

The above party certifies that it has provided discovery and inspection of documents to all other parties to this action as required by Order 2, Rule 1 of the *District Court Rules 1996*.

.....  
Solicitors for Plaintiff/Defendant



Form 2

(Order 4 Rule 2(b))

IN THE DISTRICT COURT )  
OF WESTERN AUSTRALIA )  
HELD AT PERTH )

No \_\_\_\_\_ of 20 \_\_\_\_ .

Between :

Plaintiff

and

Defendant

ENTRY FOR TRIAL

Dated:

Filed on behalf of:

Filed by:

Pursuant to Order 4 of the *District Court Rules 1996* the abovenamed party enters this action for trial at the District Court of Western Australia, held at Perth.

The unsuitable dates for a Pre-Trial Conference for all parties are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE OF PRE-TRIAL CONFERENCE

TAKE NOTICE that in accordance with this entry for trial a Pre-Trial Conference has been listed for this action on \_\_\_\_\_ day the \_\_\_\_\_ day of 20\_\_\_\_ at the hour of \_\_\_\_\_ o'clock, on Level 12, May Holman Centre, 32 St George's Terrace, Perth.

All parties are required to attend in person accompanied by their respective solicitors and shall bring with them all relevant documents. In actions which concern the State Government Insurance Commission or any other body corporate, an authorised representative of that body shall attend.

Enquiries regarding this notice should be directed to the Case Management Clerk, Telephone No (09) 425-2230

**Defined Terms**

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**Notes**

- <sup>1</sup> This is a compilation of the *District Court Rules 1996* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>District Court Rules 1996</i>	7 March 1996 pp.851-66	31 March 1996 (see rule 2)	
<i>District Court Amendment Rules 1996</i>	6 December 1996 pp.6725-8	1 January 1997 (see rule 2)	
<i>District Court Amendment Rules 1997</i>	24 April 1997 pp.2070-1	24 April 1997 (see rule 2)	
<i>District Court Amendment Rules 2000</i>	11 August 2000 pp.4693-5	11 August 2000 (see rule 2)	
<i>District Court Amendment Rules 2001</i>	27 July 2001 p. 3903	28 July 2001 (see rule 2)	
<i>District Court Amendment Rules 2004</i>	17 Dec 2004 p. 6077-9	17 Dec 2004	