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SUPREME COURT ACT 1935

**SUPREME COURT AMENDMENT
RULES 2008**

Western Australia

Supreme Court Amendment Rules 2008

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Supreme Court Act 1935

Supreme Court Amendment Rules 2008

Made by the Judges of the Supreme Court.

Part 1 — Preliminary matters

1. Citation

These rules are the *Supreme Court Amendment Rules 2008*.

2. Commencement

These rules come into operation as follows:

- (a) Part 1 — on the day on which these rules are published in the *Gazette* (“**gazettal day**”);
- (b) Part 2 — on the day after gazettal day;
- (c) Part 3 — on the day after gazettal day or on 25 February 2008, whichever is the later.

3. The rules amended

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

Supreme Court Amendment Rules 2008**Part 2** General amendments**r. 4**

Part 2 — General amendments**4. Order 1 amended**

- (1) Order 1 rule 2(2) is repealed.
- (2) Order 1 rule 6(2) is repealed.

5. Order 12 amended

- (1) Order 12 rule 1(1) is amended by deleting “solicitor” and inserting instead —
“ practitioner ”.
- (2) Order 12 rule 1(2) is amended by deleting “solicitor.” and inserting instead —
“ practitioner. ”.
- (3) Order 12 rule 1(3), (4) and (5) are repealed.
- (4) Order 12 rule 2 is repealed and the following rule is inserted instead —

“

2. How to enter an appearance

- (1) To enter an appearance, a defendant must file 2 copies of a Form No. 6 signed by —
 - (a) the practitioner who acts for the defendant; or
 - (b) if the defendant is self-represented, the defendant.
- (2) A memorandum of appearance must, in accordance with Order 71A, state —
 - (a) the defendant’s geographical address; and
 - (b) the defendant’s service details.

Supreme Court Amendment Rules 2008

General amendments

Part 2**r. 6**

- (3) If one practitioner acts for 2 or more defendants in one action, a memorandum of appearance may relate to more than one of those defendants.

”

- (5) Order 12 rule 4 is repealed and the following rule is inserted instead —

“

4. Appearance to be served on plaintiff

On the day on which a defendant enters an appearance to a writ, the defendant must comply with Order 72 rule 5 for the purposes of serving the stamped copy memorandum returned under rule 3 on the plaintiff in accordance with that Order.

”

6. Order 18 amended

Order 18 rule 3(5) is repealed and the following subrule is inserted instead —

“

- (5) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 10, addressed to that person.

”

7. Order 29A amended

- (1) Order 29A rule 3(2)(l) is amended by deleting “subparagraph (f)” and inserting instead —

“ subparagraph (j) ”.

Supreme Court Amendment Rules 2008**Part 2** General amendments**r. 8**

- (2) After Order 29A rule 18 the following rule is inserted —

“

18A. Cases inactive for 12 months deemed inactive

If no procedural step is taken in a case for 12 months by any party to the case, the case is to be taken to be inactive unless a judge, master or Case Management Registrar orders otherwise.

”.

- (3) Order 29A rule 19(1) is amended as follows:

- (a) by inserting after “effect,” —

“

or a case is to be taken to be inactive under rule 18A,

”.

- (b) in paragraph (b) by inserting after “List” —

“ and of the effect of rule 21 ”.

8. Order 36B amended

- (1) After Order 36B rule 1(3) the following subrule is inserted —

“

- (4) If a subpoena is to be served under the *Service and Execution of Process Act 1992* of the Commonwealth, this Order is subject to that Act and, with any necessary changes, applies to and in respect of the subpoena.

”.

- (2) Order 36B rule 3(8) is repealed and the following subrule is inserted instead —

“

- (8) The last date for service of a subpoena —
- (a) is the date falling 5 days before the earliest date on which the addressee is required to comply

Supreme Court Amendment Rules 2008

General amendments

Part 2**r. 9**

with the subpoena or an earlier or later date fixed by the court; and

- (b) must be specified in the subpoena.

”.

9. Order 38A amended

The heading to Order 38A is amended by deleting “[*Evidence Act 1906*, s. 109-14]” and “[*Cwlth. Evidence Act 1905*, Part IIIB]”.

10. Order 39 amended

The heading to Order 39 is amended by deleting “(*Evidence Act 1906*, s. 115-118C)”.

11. Order 44A amended

The heading to Order 44A is deleted and the following heading is inserted instead —

“

**Order 44A — *Foreign Judgments Act 1991*
(Commonwealth) rules**

”.

12. Order 46 amended

After Order 46 rule 2 the following rule is inserted —

“

3. Enforcing judgment in action between partners

- (1) Proceedings under the Act to enforce a judgment in an action described in Order 71 rule 9 cannot be commenced without the leave of the Court.
- (2) On an application for such leave such accounts and inquiries may be directed to be taken and made, and such directions given, as may be just.

”.

Supreme Court Amendment Rules 2008**Part 2** General amendments**r. 13**

13. Order 58 amended

Order 58 is amended as follows:

- (a) by deleting the heading “1 — Introductory” and inserting instead —

“

Division 1 — Introductory

”.

- (b) by deleting the heading “2 — Administration and trusts” and inserting instead —

“

Division 2 — Administration and trusts

”.

- (c) by deleting the heading “4 — Declaration on originating summons” and inserting instead —

“

Division 4 — Declaration on originating summons

”.

- (d) by deleting the heading “5 — General” and inserting instead —

“

Division 5 — General

”.

14. Order 61 amended

Order 61 is amended as follows:

- (a) by deleting the heading “1 — Application of order” and inserting instead —

“

Division 1 — Application of order

”.

Supreme Court Amendment Rules 2008

General amendments

Part 2**r. 14**

- (b) by deleting the heading “2 — Summons to proceed” and inserting instead —

“

Division 2 — Summons to proceed

”.

- (c) by deleting the heading “3 — Attendances” and inserting instead —

“

Division 3 — Attendances

”.

- (d) by deleting the heading “4 — Claims of creditors and other claimants” and inserting instead —

“

Division 4 — Claims of creditors and other claimants

”.

- (e) by deleting the heading “5 — Interest” and inserting instead —

“

Division 5 — Interest

”.

- (f) by deleting the heading “6 — Certificates of the Master” and inserting instead —

“

Division 6 — Masters’ and registrars’ certificates

”.

- (g) by deleting the heading “7 — Further consideration” and inserting instead —

“

Division 7 — Further consideration

”.

Supreme Court Amendment Rules 2008**Part 2** General amendments**r. 15**

15. Order 62 amended

The heading to Order 62 is deleted and the following heading is inserted instead —

“

Order 62 — *Trustees Act 1962* rules

”.

16. Order 65 amended

Order 65 rule 4 is amended by renumbering the second of the subrules that is numbered “(2)” as “(3)”.

17. Order 65C amended

The heading to Order 65C is deleted and the following heading is inserted instead —

“

**Order 65C — *Electoral Act 1907* section 62N
rules**

”.

18. Order 66 amended

(1) Order 66 is amended as follows:

(a) by inserting before rule 1 the following heading —

“

Division 1 — General

”.

(b) by deleting the heading “Taxation of costs” before rule 32 and inserting instead —

“

Division 2 — Taxation of costs

”.

Supreme Court Amendment Rules 2008

General amendments

Part 2**r. 19**

- (c) by deleting the heading “Review of taxation” before rule 53 and inserting instead —

“

Division 3 — Review of taxation

”;

- (d) by deleting the heading “Miscellaneous” before rule 57 and inserting instead —

“

Division 4 — Miscellaneous

”.

- (2) After Order 66 rule 8 the following rule is inserted —

“

8A. Costs where practitioner acts pro bono

- (1) In an action or matter in which a practitioner provides free legal services to a party, the party shall be entitled to recover costs in the same manner and to the same extent as if the services were provided for reward.
- (2) If an order is made for the payment of the party’s costs, the practitioner may recover the amount ordered to be paid in respect of —
 - (a) fees for the practitioner’s services; and
 - (b) disbursements incurred by the practitioner on behalf of the party.

”.

19. Order 71 amended

- (1) Order 71 rule 8 is repealed.

Supreme Court Amendment Rules 2008**Part 2** General amendments**r. 20**

- (2) Order 71 rule 9 is repealed and the following rule is inserted instead —

“

9. Rules 1 to 7 apply also to some actions between a firm and its members etc.

Rules 1 to 7 apply also to actions between a firm and one or more of its members and to actions between firms having one or more members in common, if the firm or firms carry on business within the jurisdiction.

”

- (3) Order 71 rule 10 is repealed.
- (4) Order 71 rule 11 is amended by deleting “Rules 2 to 10” and inserting instead —

“ Rules 2 to 9 ”.

20. Order 73 amended

Order 73 rule 12 is amended by deleting the heading “No inspection by party until his affidavit filed” after subrule (1).

21. Order 75 amended

The heading to Order 75 is deleted and the following heading is inserted instead —

“

Order 75 — *Inheritance (Family and Dependants Provision) Act 1972* rules

”

Supreme Court Amendment Rules 2008

General amendments

Part 2**r. 22****22. Order 75A amended**

- (1) The heading to Order 75A is deleted and the following heading is inserted instead —

“

Order 75A — *Legal Practice Act 2003* rules

”

- (2) Order 75A rule 3(2) is repealed and the following subrule is inserted instead —

“

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

I, [name] of [address], [insert an oath or affirmation according to the *Oaths, Affidavits and Statutory Declarations Act 2005*] that I will truly and honestly conduct myself in my practice as a legal practitioner of this honourable court according to the best of my knowledge and ability.

”

23. Order 80 amended

The heading to Order 80 is deleted and the following heading is inserted instead —

“

Order 80 — *Escheat (Procedure) Act 1940* rules

”

24. Order 80A amended

The heading to Order 80A is deleted and the following heading is inserted instead —

“

Order 80A — *Royal Commission (Custody of Records) Act 1992* rules

”

Supreme Court Amendment Rules 2008**Part 2** General amendments**r. 25**

25. Order 81B amended

The heading to Order 81B is deleted and the following heading is inserted instead —

“

Order 81B — *Service and Execution of Process Act 1992 (Commonwealth) rules*

”

26. Order 81D amended

The heading to Order 81D is deleted and the following heading is inserted instead —

“

Order 81D — *Commercial Arbitration Act 1985 rules*

”

27. Order 81F amended

Order 81F is amended as follows:

- (a) by renumbering the second of the rules that is numbered 6 as “7”;
- (b) by renumbering rules 7 and 8 as “8” and “9” respectively.

28. Order 81FA amended

- (1) The heading to Order 81FA is deleted and the following heading is inserted instead —

“

Order 81FA — *Criminal Property Confiscation Act 2000 rules*

”

Supreme Court Amendment Rules 2008

General amendments

Part 2**r. 29**

- (2) Order 81FA rule 11(2)(b) and “and” after it are deleted and the following is inserted instead —

“

- (b) enter the particulars of it in a register kept for the purpose; and

”.

29. Order 81G inserted and Second Schedule amended

- (1) After Order 81FA the following Order is inserted —

“

Order 81G — *Criminal and Found Property Disposal Act 2006* rules

1. Terms used in this Order

- (1) In this Order, unless the contrary intention appears —
“**Act**” means the *Criminal and Found Property Disposal Act 2006*;
“**claim**” means an application made under the Act to the Court for an order under the Act.
- (2) If a term is given a meaning in the Act, it has the same meaning in this Order, unless the contrary intention appears.

2. General matters

- (1) Proceedings on a claim are proceedings in the Court’s civil jurisdiction and the civil standard of proof applies.
- (2) Without otherwise affecting Order 37, an affidavit filed under this Order —
- (a) may include material other than evidence that the deponent could give orally in court, such as hearsay or a belief or opinion; but

Supreme Court Amendment Rules 2008**Part 2** General amendments**r. 29**

- (b) must include the source of any hearsay or the grounds for any belief or opinion.
- (3) In proceedings on a claim, the Court, on an application by a party to the claim or on its own initiative —
 - (a) may shorten any period in this Order;
 - (b) may extend any period in this Order, even if the period has elapsed;
 - (c) may modify or dispense with any requirement of this Order;
 - (d) may, by order, give directions as to the conduct of the proceedings;
 - (e) may adjourn the proceedings,and may do so on terms.

3. Claims, making

- (1) To make a claim, a person must file a Form No. 108.
- (2) A claim must name as a defendant any person who would be affected by any order stated in the claim.
- (3) The hearing date stated in a claim must be at least 21 days after the date on which it is filed.
- (4) A claim must be filed with one or more affidavits that state the facts and circumstances on which it is based.
- (5) A claim, and any affidavit filed with it, must be served by the claimant —
 - (a) on each defendant to the claim; and
 - (b) in accordance with the *Interpretation Act 1984* section 76; and
 - (c) within 7 days after the date on which the claim is filed.

Supreme Court Amendment Rules 2008

General amendments

Part 2**r. 29**

4. Defendant may file memorandum of appearance

A defendant who is served with a claim and who wants to respond to it or be heard at its hearing must enter an appearance under Order 12.

5. Defendant may file affidavit in response

- (1) A defendant who is served with a claim may file an affidavit that states the facts and circumstances on which the defendant relies.
- (2) Any such affidavit must —
 - (a) be filed within 10 days after the date on which the defendant is served with the claim; and
 - (b) be served on each other party to the claim in accordance with Order 72; and
 - (c) be served within 3 working days after the date on which it is filed.

6. Applications in the course of proceedings on a claim

- (1) A party to a claim may at any time apply to the Court for an order that may be made under rule 2(3).
- (2) To make the application, the party must file a Form No. 86 with any necessary changes and any affidavit on which the party intends to rely.
- (3) The applicant must serve a copy of the filed documents on each other party to the claim at least 3 working days before the hearing date for the application.

7. Hearing a claim

At least 3 working days before the hearing date of a claim, the claimant must file and serve on each other party to the claim a draft of the final orders that the claimant wants the Court to make.

Supreme Court Amendment Rules 2008**Part 2** General amendments**r. 29****8. Costs**

- (1) The Court may order a party to a claim to pay the whole or a part of another party's costs of proceedings on the claim.
- (2) The Court may fix the amount of costs to be paid or may order the costs to be taxed.
- (3) The amount of any costs ordered to be paid must be in accordance with any relevant scale within the meaning given by Order 66 rule 11(1).

- (2) The Second Schedule is amended by inserting after Form No. 107 the following form —

108. Criminal and Found Property Disposal Act 2006, claim under (O. 81G r. 3)

Supreme Court of Western Australia General Division		No:
		<i>Criminal and Found Property Disposal Act 2006 claim</i>
Parties	Claimant Defendant	
Claim ¹	This claim is made under the <i>Criminal and Found Property Disposal Act 2006</i> section In relation to the property described below, the claimant applies for — 1.	
Property to which claim relates ²		
Estimated value ³	\$	
Hearing details	This claim will be heard on 20 not before a.m./p.m. at the Supreme Court, Stirling Gardens, Barrack Street, Perth.	
Claimant's details		
Claimant's geographical address ⁴		
Claimant's service details ⁴		

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General amendments

Part 2**r. 30**

Signature and date		
Signature of claimant or solicitor	Claimant/Claimant's solicitor	Date:

Notes to Form No. 108 —

1. State the section(s) of the *Criminal and Found Property Disposal Act 2006* under which the claim is made.
State the order(s) the claimant wants the Court to make in numbered paragraphs.
2. Describe the property to which the claim relates.
3. State the estimated value of the property.
4. Must be in accordance with Order 71A.

”

30. Order 81H amended

The heading to Order 81H is deleted and the following heading is inserted instead —

“

**Order 81H — *Surveillance Devices Act 1998*
rules**

”

31. Order 85 amended

The heading to Order 85 is deleted and the following heading is inserted instead —

“

**Order 85 — *Federal Courts (State Jurisdiction)
Act 1999* rules**

”

32. Second Schedule amended

- (1) The Second Schedule is amended by renumbering Form 21 as “Form 22”.
- (2) The Second Schedule is amended in Form 93A by deleting “for the Magisterial District of”.

Supreme Court Amendment Rules 2008**Part 3** Amendments about filing and service**r. 33**

Part 3 — Amendments about filing and service**33. Order 67 amended**

- (1) Order 67 rule 9(1) is amended by inserting after “was filed” —
“
and, if the document was filed under rule 20, a record
of the fact that it was filed electronically
”.

- (2) Order 67 rule 9(2) is amended by inserting after “delivery” —
“ or receipt ”.

- (3) After Order 67 rule 18 the following rules are inserted —
“

19. Some documents may be filed by fax

- (1) Subject to this rule, a document may be filed by fax.
- (2) A person wanting to file a document by fax must use the published fax number for the Central Office.
- (3) A document that, with any attachments and a cover page, is more than 20 pages long, must not be filed by fax and any such document received by the Central Office is to be taken not to have been filed.
- (4) A document that is sent by fax to the Central Office must have a cover page stating —
- (a) the sender’s name, postal address, document exchange number (if any), telephone number and fax number; and
- (b) the number of pages (including the cover page) being sent by fax.

Supreme Court Amendment Rules 2008
Amendments about filing and service **Part 3**

r. 33

- (5) A person that files a document by fax must —
- (a) endorse the first page of the original document with —
 - (i) a statement that the document is the original of a document sent by fax; and
 - (ii) the date and time the document was sent by fax;
 - and
 - (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and
 - (c) if directed to do so by the Court, produce the items in paragraph (b) to the Court.
- (6) A document filed by fax is to be taken to have been filed —
- (a) if the whole document is received before 4.00 p.m. on a day when the Central Office is open for business, on that day;
 - (b) otherwise, on the next day when the Central Office is open for business.
- (7) A person who files a document by fax must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.
- (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document by fax to file the paper version of the document.

Supreme Court Amendment Rules 2008**Part 3** Amendments about filing and service**r. 33**

20. Some documents may be filed using the Court's website

- (1) Subject to the requirements of the Court's website and this rule, a person may file a document in the Central Office electronically by filing an electronic version of it by means of the Court's website.
- (2) If these Rules require a document to be signed by a person who is not, or who is not acting on behalf of, the person filing it, the document cannot be filed electronically unless it is an affidavit.
- (3) If these Rules require a document, before it is filed, to be signed by or on behalf of the person filing it and the document is being filed electronically —
 - (a) the document need not be signed by that person; and
 - (b) the person filing 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.
- (4) A person who files an affidavit electronically must either file an electronic version of it that includes the signatures on it or —
 - (a) file an electronic version of it that does not include the signatures on it; and
 - (b) ensure that the electronic version, 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

Supreme Court Amendment Rules 2008

Amendments about filing and service

Part 3**r. 34**

-
- (c) also file an undertaking that the person —
 - (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.
 - (5) A document filed electronically is to be taken to have been filed —
 - (a) if the whole document is received by the Central Office before 4.00 p.m. on a day when it is open for business, on that day; or
 - (b) otherwise, on the next day when the Central Office is open for business.
 - (6) A document that is sent electronically to the Court but not in accordance with the requirements of the Court's website and this rule is to be taken not to have been filed.
 - (7) A person who files a document electronically must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.
 - (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document electronically to file the paper version of the document.

”.

34. Order 71A amended

- (1) Order 71A rule 2(a)(ii) is amended by inserting after “place” —
“ where ”.

Supreme Court Amendment Rules 2008**Part 3** Amendments about filing and service**r. 35**

- (2) Order 71A rule 3(2)(c) is amended by inserting after “address” —
“ in Australia ”.
- (3) After Order 71A rule 3(4) the following subrules are inserted —
“
- (5) If a party who is self-represented is registered by the Court’s website as a person authorised to file documents electronically, any email address stated under subrule (1) must be the email address of the party recorded on the website.
- (6) If a practitioner is registered by the Court’s website as a person authorised to file documents electronically, any email address stated under subrule (2) must be the email address of the practitioner recorded on the website.

”.

35. Order 72 amended

- (1) Order 72 rule 3 is amended by deleting “town clerk,” and inserting instead —
“ chief executive officer, ”.
- (2) Order 72 rule 3A is amended by inserting after “serving it” —
“ in ”.
- (3) Order 72 is amended by inserting after rule 5A(2) the following subrule —
“
- (3) If a document is served on a person in accordance with the Court’s directions given in a particular case, the document is to be taken to be served on the person at the time directed by the Court.

”.

Supreme Court Amendment Rules 2008
Amendments about filing and service **Part 3**

r. 35

- (4) Order 72 rule 6 is repealed and the following rules are inserted instead —

“

6. Service of documents by the Court

- (1) If service of a document on a person by the Court is required, the proper officer must —
- (a) serve it on the person under rule 5; or
 - (b) if the person is registered by the Court's website as a person authorised to file documents electronically —
 - (i) put it in an electronic mailbox maintained by the Court; and
 - (ii) send to the person's email address recorded on the website an email that says the document is in the mailbox,
 or serve it on the person under rule 5; or
 - (c) if the Court has directed how the document is to be served — obey the directions.
- (2) Rule 5A applies to a document served under subrule (1).

6A. Serving documents by email

Order 67 rule 20(3) and (4), with any necessary changes, apply to a document being served by email in the same way as they apply to a document being filed electronically.

”

Judges' signatures:

W. S. MARTIN

M. J. MURRAY

C. STEYTLER

A. J. TEMPLEMAN

N. J. OWEN

JOHN McKECHNIE

Supreme Court Amendment Rules 2008**Part 3** Amendments about filing and service**r. 35**

C. WHEELER

N. P. HASLUCK

C. J. McLURE

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