

## 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 —

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“**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 —

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**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.

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- (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 plaint against]” and inserting instead —  
“ [*describe the action*] ”;
  - (c) by deleting “[plaint]” 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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