

JU301*

Supreme Court Act 1935

Supreme Court Amendment Rules (No. 2) 2002

Made by the Judges of the Supreme Court.

1. Citation

These rules may be cited as the *Supreme Court Amendment Rules (No. 2) 2002*.

2. The rules amended

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

[* Reprinted 1 December 2000.

For amendments to 1 August 2002 see 2001 Index to Legislation of Western Australia, Table 4, p. 330, and Gazette 12 April 2002.]

3. Order 60A amended

Order 60A Rule 1 is amended after paragraph (e) by deleting the full stop and inserting —

“

;

- (f) under Part 5 Division 2 of the *Criminal Property Confiscation Act 2000* to conduct an examination ordered by the court under section 58 of that Act.

”.

4. **Heading to Order 81F amended**

Order 81F is amended by deleting the heading “Confiscation of profits of crime” and inserting the following heading instead —

“

**Confiscation under the
*Crimes (Confiscation of Profits) Act 1988 or the
Proceeds of Crime Act 1987 (Cwlth)***

”.

5. **New Order 81FA inserted**

After Order 81F the following order is inserted —

“

Order 81FA

**Confiscation under the *Criminal Property
Confiscation Act 2000***

Part 1 — Preliminary

1. **Interpretation**

In this Part, unless the contrary intention appears —

“**Confiscation Act 2000**” means the *Criminal Property Confiscation Act 2000*;

“**confiscable property declaration**” means a declaration under section 28 of the Confiscation Act 2000;

“**crime-used property substitution declaration**” means a declaration under section 22 of the Confiscation Act 2000;

“**criminal benefits declaration**” means a declaration under section 16 or 17 of the Confiscation Act 2000;

“**examination order**” means an order under section 58(1) of the Confiscation Act 2000;

“**freezing notice**” means a freezing notice issued under section 34 of the Confiscation Act 2000;

“**freezing order**” means an order under section 43 of the Confiscation Act 2000;

“**interstate confiscation declaration**” has the same meaning as in the Confiscation Act 2000;

“**interstate freezing order**” has the same meaning as in the Confiscation Act 2000;

“**monitoring order**” means an order under section 68(1) of the Confiscation Act 2000;

“**objection**” means an objection under section 79 of the Confiscation Act 2000 to the confiscation of property;

“production order” means an order under section 63 of the Confiscation Act 2000;

“sham transaction order” means an order under section 135(2) of the Confiscation Act 2000;

“suspension order” means an order under section 68(2) of the Confiscation Act 2000;

“unexplained wealth declaration” means a declaration under section 12 of the Confiscation Act 2000.

Part 2 — Proceedings under the Confiscation Act 2000

2. Applications for confiscation declarations

- (1) An application by the DPP under section 30(1) of the Confiscation Act 2000 for a declaration that property has been confiscated may be made *ex parte*.
- (2) If, immediately before the property was confiscated or is alleged to have been confiscated under section 6, 7 or 8 of the Confiscation Act 2000, proceedings in relation to the property were on foot under that Act or the *Misuse of Drugs Act 1981*, an application is made by summons or motion in the proceedings.
- (3) If no proceedings were on foot as mentioned in subrule (2), an application is made by originating motion in Form 64.
- (4) On hearing an application, the court may give any directions it thinks fit, whether or not it finds that the property has been confiscated.

3. Applications for other declarations or orders

- (1) Subject to subrules (2) and (3), an application under the Confiscation Act 2000 for any of the following declarations or orders is made by filing an originating summons in Form 75 —
 - (a) an unexplained wealth declaration;
 - (b) a criminal benefits declaration;
 - (c) a crime-used property substitution declaration;
 - (d) a confiscable property declaration;
 - (e) a freezing order, except an *ex parte* application;
 - (f) a sham transaction order;
 - (g) an examination order;
 - (h) a production order;
 - (i) a monitoring order;
 - (j) a suspension order;
 - (k) an order under section 85, 91, 93 or 94 of the Confiscation Act 2000.

- (2) If an application for any of the following declarations or orders is made in the course of other proceedings under the Confiscation Act 2000 the application is made by motion in the proceedings —
 - (a) an unexplained wealth declaration;
 - (b) a criminal benefits declaration;
 - (c) a crime-used property declaration;
 - (d) a confiscable property declaration;
 - (e) an examination order;
 - (f) a production order;
 - (g) an order under section 85, 91, 93 or 94 of the Confiscation Act 2000.
- (3) An ex parte application for any of the following orders is made by originating motion in Form 64 —
 - (a) a freezing order;
 - (b) an examination order;
 - (c) a production order;
 - (d) a monitoring order;
 - (e) a suspension order.

4. Affidavit in support of an application

When an application is made in accordance with Rule 3(1) or (3), the applicant must file with the application an affidavit setting out the facts and circumstances on which the application is based.

5. Objections to confiscation of property

- (1) An objection to the confiscation of property frozen under a freezing notice is made by filing an originating summons in Form 75.
- (2) An objection to the confiscation of property frozen under a freezing order is made by summons in the proceedings on the application for the freezing order.

6. Service on DPP

When a party (other than the DPP) files an objection or makes an application under this Order, the party is to serve a copy of the objection or application on the DPP.

7. Directions

- (1) A summons for directions must be filed with an application made by way of originating summons filed in accordance with Rule 3(1) or Rule 5(1) or (2), and is to be given the same return date as the originating summons.

- (2) On the hearing of the application and summons for directions, or on any other application, or of its own motion at any time, the Court may do any or all of the following —
 - (a) inquire as to the persons who may be affected by the relief the plaintiff seeks;
 - (b) for the purpose of an inquiry under paragraph (a) direct the plaintiff and the defendant to give the Court any information it requires;
 - (c) give directions as to the persons to be added as parties as being interested in the relief claimed or to represent classes of persons interested in the relief claimed.

8. Conference not required

Order 59 Rule 9 does not apply to a summons in proceedings under the Confiscation Act 2000.

9. Representative defendant

If a person has been added as a defendant in proceedings under the Confiscation Act 2000, and other persons (including unborn persons) have the same interest as the defendant or a similar interest, the Court may —

- (a) authorise the defendant to defend the proceedings on behalf of or for the benefit of all the interested persons; and
- (b) order that all the interested persons are bound by any order made in the proceedings.

Part 3 — Registration of freezing notices and interstate orders

10. Registration of freezing notices

- (1) A register called the Register of Freezing Notices is to be kept at the Central Office.
- (2) When a freezing notice is filed in the court under section 36(6) of the Confiscation Act 2000, the proper officer must —
 - (a) assign a number to it;
 - (b) enter particulars of the notice in the register; and
 - (c) indorse the notice to the effect that it was registered on the day on which the particulars were entered.

- (3) When a notice of cancellation of a freezing notice is filed in the court under section 40(2)(b) of the Confiscation Act 2000, or a freezing notice is set aside under Part 6 of the Act, the proper officer must enter the cancellation or setting aside in the register.

11. Registration of interstate orders

- (1) A person desiring to register an interstate freezing order or an interstate confiscation order may file a copy of the order sealed with the seal of the court that made the order.
- (2) When a sealed copy of an interstate freezing order is filed, the proper officer must —
- (a) assign a number to it;
 - (b) enter particulars of the order in The Register of Interstate Restraining Orders kept under Order 81F Rule 18(1); and
 - (c) indorse the order to the effect that it was registered on the day on which the particulars were entered.
- (3) When the registration of an interstate freezing order or an interstate confiscation order is cancelled under section 122 of the Confiscation Act 2000, the proper officer must enter the cancellation in the register.

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Dated: 12 August 2002.

D. K. MALCOLM, Chief Justice.

Judges' signatures:

H. A. WALLWORK

G. F. SCOTT

M. J. MURRAY

C. D. STEYTLER

R. J. M. ANDERSON

K. H. PARKER

A. J. TEMPLEMAN

L. W. ROBERTS-SMITH

C. A. WHEELER

C. J. McLURE

G. P. MILLER

C. J. L. PULLIN

J. R. McKECHNIE

E. M. HEENAN

N. P. HASLUCK

M. L. BARKER
