
JUSTICE

JM301*

Supreme Court Act 1935

Supreme Court Amendment Rules 2001

Made by the Judges of the Supreme Court.

1. Citation

These rules may be cited as the *Supreme Court Amendment Rules 2001*.

2. The rules amended

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

[* Reprinted as at 1 December 2000.

For amendments to 23 January 2001 see 1999 Index to Legislation of Western Australia, Table 4, pp. 287-8, and Gazette 29 December 2000.]

3. Order 65C inserted

After Order 65B the following Order is inserted —

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Order 65C

Reviews under the *Electoral Act 1907*

1. Interpretation

In this Order, unless the contrary intention appears —

“**Electoral Commissioner**” means the Electoral Commissioner appointed under the *Electoral Act 1907*.

2. Application of Order

This Order applies to reviews by the Court of decisions referred to in section 62N(1) of the *Electoral Act 1907*.

3. Application for review

- (1) An application for review to which this Order applies must be instituted within one month or such further period as the Court allows after the decision comes to the notice of the applicant.
- (2) A copy of the notice of originating motion must be served on the Electoral Commissioner.
- (3) If the Electoral Commissioner wishes to be heard at the hearing of the review, the Commissioner must enter an appearance.

4. Title of the notice of review

The notice of originating motion and all subsequent proceedings on reviews to which this Order applies, must be entitled “In the Supreme Court of Western Australia”, “On review of a decision of the Electoral Commissioner, and in the matter of the *Electoral Act 1907*, and in the matter of the application or other proceeding in which such decision was given”.

5. Hearing

- (1) Subject to subrules (2) and (3) and the provisions of the *Electoral Act 1907*, the review must be heard by a Judge sitting in Court.
- (2) A Judge may, at any time before the hearing of a review, direct that the review is to be heard by a Judge sitting in chambers.

- (3) The Judge hearing a review in Court may direct that the further hearing of the review be adjourned into chambers.
- (4) A review directed under subrules (2) and (3) to be heard or further heard in chambers may be adjourned from chambers into Court.

6. Date of hearing

- (1) Unless the Court otherwise orders, a review to which this Order applies must not be heard before the expiration of 21 days from the date when the review was instituted.
- (2) Any party may apply to the Court for an order fixing the date for hearing the review.
- (3) Unless an order under subrule (2) has been made, the day for hearing the review must be fixed by the proper officer in accordance with the practice of the Court.
- (4) The proper officer must send to the applicant and to the Electoral Commissioner, notice of the day fixed for the hearing of the review.
- (5) If the day for hearing the review is fixed by the proper officer it must not be earlier than 7 days after notice has been sent to the applicant and to the Electoral Commissioner under subrule (4).

7. Review book

- (1) The applicant must, not less than 6 clear days immediately preceding the day fixed for hearing the review —
 - (a) prepare to the satisfaction of the Registrar a review book containing all material relevant to the hearing of the review;
 - (b) lodge at the Central Office 2 copies of the review book so prepared, for the use of the Judge upon the hearing; and
 - (c) serve upon the Electoral Commissioner one copy of the review book.
- (2) Unless the Court otherwise orders, the costs of complying with this Rule are to be costs in the cause.

8. Applicant limited to grounds in notice of originating motion

- (1) If the applicant intends to ask for any amendment at the hearing the applicant must give notice of the applicant's intention and of the proposed amendment.

- (2) The Court may allow any amendment which it thinks necessary for the advancement of justice, but except by leave of the Court a ground must not be relied on at the hearing other than a ground set out in the notice of originating motion.

9. Right to be heard in opposition

- (1) On the hearing of the application the Court must hear any person who wants to oppose it, and appears to the Court to be a proper person to be heard, notwithstanding that the person has not been served with the notice of originating motion.
- (2) A person who is heard under this Rule, may, in the discretion of the Court, be ordered to pay costs.

10. Additional affidavits, determination of issue, etc.

- (1) On the hearing of the application the Court may allow the applicant to use further affidavits upon such terms as to adjournment or costs as the Court thinks fit.
- (2) If the applicant intends to ask to be allowed to use further affidavits, the applicant must give reasonable notice of the applicant's intention to the Electoral Commissioner.
- (3) If any question or issue of fact arises upon the affidavits the Court may give such directions as it thinks fit for the determination of the question or issue by trial or inquiry.

11. Order

- (1) The result of the review must be embodied in a formal Order, which must be filed in the Central Office.
- (2) Except where the formal Order is filed by or on behalf of the Electoral Commissioner, the Registrar must send to the Electoral Commissioner, a memorandum of the result of the review.

12. Application of Rules of Court

In so far as the ordinary practice of the Court and the Rules of Court are not inconsistent with the provisions of this Order, they apply to proceedings under this Order with such modifications as the circumstances require.

Dated: 29 January 2001.

DAVID MALCOLM, Chief Justice's signature.

G. A. KENNEDY

A. J. TEMPLEMAN

W. P. PIDGEON

C. A. WHEELER

H. A. WALLWORK

G. P. MILLER

R. J. M. ANDERSON

N. P. HASLUCK

N. J. OWEN

G. F. SCOTT

K. H. PARKER

Judges' signatures.