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Supreme Court Act 1935

## Supreme Court (Court of Appeal) Amendment Rules 2017

Made by the judges of the Supreme Court.

### 1. Citation

These rules are the *Supreme Court (Court of Appeal) Amendment Rules 2017*.

### 2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the 14<sup>th</sup> day after that day.

### 3. Rules amended

These rules amend the *Supreme Court (Court of Appeal) Rules 2005*.

### 4. Rule 3 amended

- (1) In rule 3(1) delete the definitions of:  
*decision*  
*registrar*
- (2) In rule 3(1) insert in alphabetical order:

*decision* includes decree, determination, direction, judgment and order;

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**registrar** means —

- (a) the Court of Appeal Registrar;
  - (b) a registrar directed under section 155(4) of the Act to assist the Court of Appeal Registrar;
- (3) In rule 3(1) in the definition of **interim order** delete paragraph (g) and insert:
- (g) an order that extends or shortens the time for obeying —
    - (i) a requirement of these rules, other than the time for commencing an appeal; or
    - (ii) an order made under these rules;
  - (ga) an order granting leave for any matter for which leave is required under rule 42A;

**5. Rule 4 amended**

Delete rule 4(2).

**6. Rule 5A inserted**

At the beginning of Part 2 Division 1 insert:

**5A. Delegated jurisdiction may be exercised by Court of Appeal**

A delegation by these rules of jurisdiction to a single judge or a registrar does not —

- (a) limit the jurisdiction of the Court of Appeal; or
- (b) prevent the Court of Appeal from exercising the jurisdiction.

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**r. 7****7. Rule 7 amended**

Delete rule 7(1)(f) and insert:

- (f) to limit the time a party has to make oral submissions at a hearing;
- (g) to order some or all of the parties to an appeal to attend a hearing.

**8. Rule 10 amended**

(1) Delete rule 10(1) and insert:

- (1) A registrar may refuse to accept for filing any document that is required or permitted by these rules, or an order made under these rules, if it does not obey these rules or any order made under these rules.

(2) In rule 10(2):

- (a) delete “The registrar” and insert:

A registrar

- (b) delete “jurisdiction —” and insert:

jurisdiction to do any of the following —

- (c) in paragraph (g) delete “1982; or” and insert:

1982;

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**9. Rule 11 amended**

After rule 11(2) insert:

- (3) If under these rules a registrar may refer any question or other matter to a single judge, the registrar may instead refer it to the Court of Appeal and may make an order pending the Court of Appeal's decision.

Note: The heading to amended rule 11 is to read:

**Registrar may refer questions to single judge or Court of Appeal**

**10. Rule 14 amended**

In rule 14 delete the definition of *reviewable decision* and insert:

*reviewable decision* means a decision made by a registrar under these rules, other than these —

- (a) a decision made under rule 11;
- (b) a decision to list a CA matter;
- (c) a decision made as a Taxing Officer.

**11. Rule 20 amended**

- (1) After rule 20(5) insert:

- (6) A person, other than a registrar, who signs a form in Schedule 1 must print their full name below their signature.

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**r. 12**

- (2) In rule 20(5) after paragraph (a) insert:

and

**12. Rule 21 amended**

- (1) Delete rule 21(1)(c) and (d) and insert:

(c) must comply with subrule (1A); and

- (2) After rule 21(1) insert:

(1A) The textual content of any document that is filed, including any endnotes, footnotes and quotations, must be typed using —

- (a) at least the size of type used for these rules (12 point Times New Roman); and
- (b) a line spacing of at least 1.5.

- (3) In rule 21(2) delete “Subrule (1) does” and insert:

Subrules (1) and (1A) do

- (4) In rule 21(1) after each of paragraphs (a) and (b) insert:

and

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**13. Rule 24 amended**

- (1) In rule 24:
  - (a) delete “A lawyer” and insert:
    - (1) A lawyer
  - (b) in paragraph (a) delete “rule 23;” and insert:
    - rule 23; or
  - (c) in paragraphs (b) and (c) delete “court” and insert:
    - Court of Appeal
- (2) At the end of rule 24 insert:
  - (2) If the Court of Appeal gives leave for a lawyer to cease to act for a party, the lawyer is taken to be continuing to act for the party until the lawyer has complied with subrule (3).
- (3) The lawyer must —
  - (a) serve the order giving leave on the party; and
  - (b) file a Form 5A (Service certificate by lawyer ceasing to act) that —
    - (i) certifies the party has been served; and
    - (ii) states the party’s last known geographical address in accordance with Order 71A rule 2 of the RSC.

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**r. 14**

- (4) The last known geographical address of the party stated in Form 5A is taken to be the party's service details until —
  - (a) another lawyer files a Form 5 under rule 23; or
  - (b) the party notifies the Court of Appeal of a change of the party's service details.

**14. Rule 26A inserted**

At the end of Part 5 Division 1 insert:

**26A. Parties to appeals**

- (1) Each person who would be directly affected by the relief sought in an appeal must be made a respondent to the appeal.
- (2) In an appeal, the primary court must not be made a respondent unless the Court of Appeal orders otherwise.
- (3) A person cannot be made an appellant in an appeal without their consent.
- (4) Subject to subrule (3), the Court of Appeal may order that a person be added as a party and may order a party to be removed.

**15. Rule 29 amended**

In rule 29(5) delete "Form 3." and insert:

Form 3 (Service certificate).

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**16. Rule 31 amended**

Delete rule 31(4) and (5) and insert:

- (4) If a respondent does not file a Form 4, the respondent —
  - (a) is not entitled to receive or be served with any document filed for the purposes of the appeal, unless a single judge orders otherwise; and
  - (b) is not entitled to take part or be heard in the appeal; and
  - (c) is not a party to the appeal for the purposes of these rules.

**17. Rule 31A inserted**

After rule 31 insert:

**31A. Cross appeals**

- (1) If under rule 31 a respondent files a Form 4, the respondent may also appeal (***cross appeal***) against the decision specified in the appellant's appeal notice.
- (2) To commence a cross appeal, a respondent must file a Form 4A within 7 days after the date on which the respondent is served with the appeal notice.
- (3) These rules apply to a cross appeal to the same extent as they apply to an appeal, unless a single judge orders otherwise in a particular case.
- (4) After a respondent cross appeals, a registrar must —
  - (a) set the time within which the respondent must file documents in respect of the cross appeal



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**r. 18**

that correspond to the “Appellant’s case” referred to in rule 32; and

- (b) set the time within which the appellant must file documents in respect of the cross appeal that correspond to the “Respondent’s answer” referred to in rule 33.

**18. Rule 32 amended**

- (1) In rule 32(2)(a) delete “7 days” and insert:

14 days

- (2) After rule 32(3)(a)(iv) insert:

- (v) a document titled “Draft appeal book indexes”;

- (3) In rule 32(4):

- (a) in paragraph (c)(iii) delete “law.” and insert:

law;

- (b) after paragraph (c) insert:

and

- (d) must identify, by reference to the paragraph number or page number of the reasons for the primary court’s decision, each passage where each such error is alleged to occur; and
    - (e) if, under the written law under which the appeal is made, an appeal lies only if it is on or

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involves a question of law, must state the question of law.

(4) In rule 32(5):

(a) delete paragraph (c)(ii) and insert:

(ii) the number of each exhibit, and a description of any other piece of documentary evidence, in the primary court that is relevant; and

(b) delete paragraph (e) and insert:

(e) must include the signature and below it the printed name of the person who prepared it.

(5) In rule 32(6)(a) and (b) delete “court” and insert:

Court of Appeal

(6) In rule 32:

(a) in subrule (4) after paragraph (a) insert:

and

(b) in subrule (4) after each of paragraphs (b)(i) and (ii) and (c)(i) insert:

or

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- (c) in subrule (5) after each of paragraphs (a), (b), (c)(i) and (c) insert:

and

- (d) in subrule (6) after each of paragraphs (a), (b) and (c) insert:

and

**19. Rule 33 amended**

- (1) In rule 33(3):

- (a) in paragraph (a) delete “7 days” and insert:

14 days

- (b) delete “the registrar” and insert:

a registrar

- (2) In rule 33(4):

- (a) after paragraph (a)(iii) insert:

- (iv) a document titled “Reply to the appellant’s draft indexes”;

- (b) after paragraph (b)(ii) insert:

- (iii) a document titled “Reply to the appellant’s draft indexes”;

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(3) Delete rule 33(5)(b)(ii) and insert:

- (ii) the number of each exhibit, and a description of any other piece of documentary evidence, in the primary court that is relevant; and

(4) After rule 33(7) insert:

- (7A) Rule 32(5), with any necessary changes, applies to the document titled “Respondent’s notice of contention”.

(5) In rule 33:

- (a) in subrule (5) after paragraph (b)(i) insert:

and

- (b) in subrule (7) after paragraph (b)(i) insert:

and

**20. Rule 34 amended**

(1) After rule 34(2) insert:

- (3) Rule 32(5), with any necessary changes, applies to the document titled “Appellant’s reply to respondent’s notice of contention”.

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**r. 21**

- (2) In rule 34(2) after paragraph (b)(i) insert:

and

**21. Rule 35 replaced**

Delete rule 35 and insert:

**35. Appeal book, when required**

- (1) An appeal book, containing the documents required for the hearing of the appeal, is required for every appeal, unless a single judge orders otherwise in a particular appeal.
- (2) If, in a criminal appeal, the Court of Appeal orders that the application for leave to appeal is to be heard by itself and separately from the appeal, an appeal book is not required, unless a single judge orders otherwise.

**22. Rule 36 amended**

- (1) In rule 36(1):
  - (a) delete “the registrar” and insert:

a registrar
  - (b) delete “case” and insert:

answer

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(2) In rule 36(3):

(a) delete “The registrar” and insert:

A registrar

(b) delete paragraph (d) and insert:

- (d) to order that the contents of 2 or more parts of an appeal book be amalgamated in 1 part;
- (e) to make orders as to the form or content or both of any document in an appeal book;
- (f) to order that an electronic version of the transcript of proceedings in a primary court be used instead of a printed transcript (or parts of it) in the appeal book;
- (g) to order which party or parties are to prepare the appeal book.

(3) In rule 36(2) after each of paragraphs (a) and (b) insert:

and

**23. Rule 37 replaced**

Delete rule 37 and insert:

**37. Appeal book, general provisions**

The appeal book for an appeal must conform to rules 38 and 39 except to the extent that rule 40 provides otherwise or a single judge orders otherwise.

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**r. 24****24. Rule 38 amended****(1) In rule 38(2):****(a) after paragraph (c) insert:**

(ca) any notice of the respondent's intention  
(Form 4);

(cb) any notice of a cross appeal by the respondent  
(Form 4A);

(b) delete paragraph (f);

(c) delete paragraph (k) and insert:

(k) the signed Form 14A (Certificate of correctness  
of appeal book), required by rule 41(c);

(d) in paragraph (l) delete "the registrar" and insert:

a registrar

**(2) In rule 38(4):**

(a) delete paragraphs (c) and (d) and insert:

(c) unless an order has been made that an  
electronic version of the transcript is to be used,  
those parts of the primary court's transcript  
required by subrule (4A);

(d) a copy of those documentary exhibits in the  
primary court required by subrule (4A)  
arranged in accordance with subrule (5);

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- (b) in paragraph (f) delete “the registrar” and insert:

a registrar

- (3) After rule 38(4) insert:

- (4A) In the Green Appeal Book, the documents referred to in subrule (4)(c) and (d) must be only those, or those parts of those, that are referred to specifically in —

- (a) the appellant’s case; or
- (b) the respondent’s answer; or
- (c) the respondent’s notice of contention; or
- (d) the appellant’s reply to the respondent’s notice of contention,

unless a registrar orders otherwise.

- (4) Delete rule 38(5) and insert:

- (5) The documentary exhibits in the primary court must be arranged in the Green Appeal Book in the order in which they are lettered or numbered as exhibits in the primary court, unless a registrar orders otherwise.

**25. Rule 39 amended**

- (1) After rule 39(1) insert:

- (1A) A registrar may order that a document which is to be included in an appeal book and which is not clearly legible be typed or retyped, checked against the original, and certified as correct, before it is included.



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**r. 26**

- (1B) A document in an appeal book must not be reduced in size from its original size unless a registrar orders otherwise.

- (2) In rule 39(4) after each of paragraphs (a), (b), (c) and (d) insert:

and

**26. Rule 41 amended**

- (1) In rule 41:

- (a) delete “The appellant” and insert:

- (1) Unless a registrar has ordered otherwise under rule 36(3)(g), the appellant

- (b) delete paragraph (c) and insert:

- (c) ensure that before the appeal book is filed each party to the appeal, or their lawyer, checks it and signs a Form 14A (Certificate of correctness of appeal book); and

- (2) At the end of rule 41 insert:

- (2) On the application of a party, a registrar may dispense with the requirement in subrule (1)(c).

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- (3) In rule 41 after each of paragraphs (a) and (b) insert:

and

Note: The heading to amended rule 41 is to read:

**Appeal book to be prepared by appellant**

**27. Rule 42A inserted**

After rule 42 insert:

**42A. Matters requiring leave**

The leave of a single judge is required for these actions —

- (a) the addition or removal of a party after an appeal has been commenced;
- (b) the amendment of a document that has been filed;
- (c) the issue of a subpoena that would require a person to give oral evidence or produce anything to the Court of Appeal.

**28. Rule 43 amended**

In rule 43(2):

- (a) in paragraphs (a) and (b) delete “adjourn” and insert:  
  
refer

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**r. 29**

(b) delete paragraph (f) and insert:

- (f) to strike out any ground of appeal that does not have a reasonable prospect of succeeding or does not comply with these rules or any order made under them;
- (fa) to strike out an appeal notice if —
  - (i) the appeal is incompetent or has not been validly commenced; or
  - (ii) a Form 3 (Service certificate) is not filed within 7 days after the last date on which the appeal could have been commenced;

(c) after paragraph (g) insert:

- (ga) if a respondent to an appeal has not obeyed these rules or any order made under them, to bar the respondent from taking part in the appeal;

(d) after paragraph (k) insert:

- (ka) to refer any application for an interim order to the hearing of the appeal;

**29. Rule 44 amended**

Delete rule 44(2) and insert:

- (2) To make such an application, the party must file —
  - (a) a Form 9 (Application in an appeal); and

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- (b) an affidavit by the applicant or the applicant's lawyer or both stating why the interim order is wanted,

unless —

- (c) these rules (other than the RSC) provide otherwise; or
- (d) another written law provides otherwise; or
- (e) a single judge orders otherwise.

**30. Rule 58 deleted**

Delete rule 58.

**31. Rule 63 amended**

Delete rule 63(2) and (3) and insert:

- (2) When the appeal is concluded other than due to it being discontinued, a registrar must either —
  - (a) prepare, sign and seal the judgment or order of the Court of Appeal or a single judge, as the case requires; or
  - (b) direct a party to submit 1 or more drafts of the judgment or order, and a final version of it for signing and sealing.

**32. Rule 66 amended**

- (1) Delete rule 66(2) and insert:

- (2) If a party does not file a document required by these rules within the time specified for doing so in —
  - (a) these rules; or

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- (b) an order made under these rules, other than an order that extends any such time,

the party is not entitled to the costs of preparing and filing the document unless the Court of Appeal orders otherwise.

(2A) If —

- (a) an order made under these rules extends the time for filing a document specified in these rules or in an order made under them; and
- (b) the document is filed within that extended time,

the party who filed it is entitled to the costs of preparing and filing the document unless the order extending time is accompanied by an order that, unless the Court of Appeal orders otherwise, the party is not so entitled.

- (2) In rule 66(3) delete “Subrule (2) does” and insert:

Subrules (2) and (2A) do

- (3) In rule 66(4) delete “cause” and insert:

appeal

**33. Rule 67 amended**

- (1) In rule 67(6):

- (a) in paragraph (d) delete “issue;” and insert:

issue.

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(b) delete paragraph (e).

(2) In rule 67(6) after each of paragraphs (a), (b) and (c) insert:

and

**34. Schedule 1 amended**

(1) In Schedule 1 Form 1:

(a) delete “Indictment No.” and insert:

Indictment No./SJA No.

(b) in the row beginning “Legal representation” delete “Yes/No<sup>7</sup>” and insert:

Yes/No

(c) in the row beginning “Name<sup>9</sup>” delete “Name<sup>9</sup>” and insert:

Name

(d) delete Note 8.

(2) In Schedule 1 Form 2:

(a) in the row beginning “Legal representation” delete “Yes/No<sup>3</sup>” and insert:

Yes/No

(b) in the row beginning “Name<sup>4</sup>” delete “Name<sup>4</sup>” and insert:

Name

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- (c) delete Note 4.
- (3) In Schedule 1 Form 3 in the row beginning “Certificate”:
- (a) delete “a copy” (2<sup>nd</sup> occurrence) and insert:

<sup>1</sup> a copy

- (b) delete “Court” and insert:

Court of Appeal

- (4) Delete Schedule 1 Form 4 and insert:

**4. Notice of respondent’s intention (r. 31)**

Supreme Court of Western Australia Court of Appeal		No.:
<b>Notice of respondent’s intention</b>		
Parties to the appeal	Appellant Respondent	
Notice [Tick one box]	<input type="checkbox"/> The respondent intends to take part in this appeal. <input type="checkbox"/> The respondent does not intend to take part in this appeal and will accept any order made by the Court of Appeal in the appeal other than as to costs.	
Legal representation	Is the respondent legally represented in this appeal? Yes/No Is the respondent applying for legal aid? Yes/No	
<b>Respondent’s details for service<sup>1</sup></b>		
Name Street address Telephone Email address Reference No.	Fax No.	
Signature of respondent or lawyer	Respondent/Respondent’s lawyer	Date:

Note to Form 4 —

1. If the respondent is represented by a lawyer, the respondent’s details below must be the lawyer’s. If the respondent is self-represented, the details must be the respondent’s personal details.

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Supreme Court of Western Australia Court of Appeal		No.:
		<b>Notice of respondent's cross appeal</b>
Parties to the appeal	Appellant Respondent	
Notice	The respondent also appeals against the primary court's decision specified in the appellant's appeal notice.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Leave to appeal	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

- (5) In Schedule 1 Form 5 delete the row beginning "Notice" and insert:

Notice	The lawyer or firm of practitioners named below is acting for the above client in this appeal.
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- (6) In Schedule 1 after Form 5 insert:

**5A. Service certificate by lawyer ceasing to act (r. 24(3))**

Supreme Court of Western Australia Court of Appeal		No.:
		<b>Service certificate by lawyer ceasing to act</b>
Parties to the appeal	Appellant Respondent	
Details of order giving leave to cease to act	On [date] the Court of Appeal made an order giving leave for [name of lawyer] to cease to act for the *appellant/respondent.	



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Certificate	I certify that on [date] at [place] [name of server] served [name of party], the *appellant/respondent, with a copy of that order. I undertake to file an affidavit of service if the Court of Appeal requires me to.	
Last known address	The last known geographical address of the *appellant/respondent is <sup>1</sup>	
Signature of lawyer	Name of lawyer	Date:

Notes to Form 5A —

\* Delete the inapplicable.

1. Geographical address: see RSC Order 71A rule 2.

- (7) In Schedule 1 Form 7 in the row beginning “Notice” delete “<sup>1</sup> Draft” (2<sup>nd</sup> occurrence) and insert:

Draft

- (8) In Schedule 1 Form 8 in the row beginning “Notice” delete “<sup>1</sup> Reply” (2<sup>nd</sup> occurrence) and insert:

Reply

- (9) In Schedule 1 Form 9:

- (a) delete the row beginning “Conference” and insert:

Conference between parties [Tick one box]	<input type="checkbox"/> The parties to this application have conferred about the issues giving rise to this application but have not resolved them. The unresolved issues are: <sup>2</sup>  <input type="checkbox"/> The parties to this application have not conferred about the issues giving rise to this application because: <sup>3</sup>
--	--

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(b) delete Note 2 and insert:

2. List the unresolved issues in numbered paragraphs.
3. State the reasons why the parties have not conferred.

(10) In Schedule 1 after Form 14 insert:

**14A. Certificate of correctness of appeal book (r. 41(c))**

Supreme Court of Western Australia Court of Appeal		No.:
		<b>Certificate of correctness of appeal book</b>
Parties to the appeal	Appellant Respondent	
Appellant's certificate	The appellant certifies that — (a) this appeal book contains those materials, and only those materials, necessary for this appeal; and (b) each document copied has been compared to the original document and is correct; and (c) all documents copied are legible.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:
Respondent's certificate	The respondent certifies that — (a) this appeal book contains those materials, and only those materials, necessary for this appeal; and (b) each document copied has been compared to the original document and is correct; and (c) all documents copied are legible.	
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

(11) In Schedule 1 Form 16:

(a) delete the row beginning "Notice" and insert:

Notice	The *appellant/respondent discontinues this *appeal/the cross appeal in this appeal.
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(b) at the end of Form 16 insert:

Note to Form 16 —

\* Delete the inapplicable.

**35. Various references to “registrar” amended**

- (1) In the provisions listed in the Table delete “The registrar” and insert:

A registrar

**Table**

r. 6(3)	r. 11(1)
r. 13(1)	r. 55(6)
r. 56(3)	r. 62(4)
r. 63(4)	r. 64(2)

- (2) In the provisions listed in the Table delete “the registrar” (each occurrence) and insert:

a registrar

**Table**

r. 6(1)	r. 10(3)
r. 11(1)(c)	r. 12(1) and (2)
r. 16	r. 17(1) and (2)
r. 18(1)	r. 19(2)
r. 30(2)	r. 36(2)

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r. 38(3)(h)	r. 55(1) and (5)(b)
r. 56(4)	r. 57
r. 62(2)	r. 64(1) and (5)

- (3) In the provisions listed in the Table delete “the registrar” (1<sup>st</sup> occurrence) and insert:

a registrar

**Table**

r. 18(2)	r. 36(4)
r. 45(2) and (3)	r. 60(2)
r. 64(3) and (4)	

- (4) In rule 13(4) delete “the registrar’s” and insert:

a registrar’s

- (5) In the heading to Part 2 Division 5 delete “**the registrar**” and insert:

**a registrar**

The Hon. Chief Justice WAYNE MARTIN AC,  
Chief Justice of Western Australia,  
Supreme Court of Western Australia.

Date 21 August 2017.