

JM301

SUPREME COURT ACT 1935

SUPREME COURT AMENDMENT RULES (NO. 3) 1994

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules (No.3) 1994*.

Principal rules

2. In these rules the *Rules of the Supreme Court 1971** are referred to as the principal rules.

[* Reprinted in the Gazette of 29 March 1986 at pp. 779-1100.
For amendments to 7 June 1994 see 1993 Index to Legislation of Western Australia, Table 4, pp. 267-9, and Gazette of 1 March 1994.]

Order 70 amended

3. Order 70 of the principal rules is amended —

- (a) by repealing Rule 1 and substituting the following Rule —

“

Interpretation

1. In this Order unless the contrary intention appears —

“**person under disability**” means —

- (a) a person who is an infant;
- (b) a represented person; or
- (c) a person not being a person referred to in paragraphs (a) or (b), who, by reason of mental illness, defect or infirmity, however occasioned, is declared by the Court to be incapable of managing his affairs in respect of any proceedings to which the declaration relates;

“**represented person**” means a represented person within the meaning of the Act;

“**the Act**” means the *Guardianship and Administration Act 1990*.

”;

- (b) in Rule 3 —

- (i) by repealing paragraph (3) and substituting the following paragraph —

“

(3) If a person under a disability is a represented person in respect of whom —

- (a) a plenary guardianship or administration order has been made under the Act; or

- (b) a limited guardianship or administration order has been made under the Act, which authorizes the guardian or administrator, as the case may be, to conduct legal proceedings in the name of the person under a disability or on his behalf,

the guardian or administrator shall act as next friend or guardian *ad litem*, as the case may be, of the represented person in any proceedings unless, in a case to which paragraph (5) or (6) or Rule 6 applies, some other person is appointed by the Court to be the next friend or guardian *ad litem*, as the case may be, of the represented person in those proceedings.

- (ii) in paragraph (4) by deleting "an incapable patient or an infirm" and substituting the following —

" a represented ";

- (iii) in paragraph (6) by deleting "patient" and substituting the following —

" person under a disability ";

- (iv) in paragraph (7) by inserting after "Court" the following —

"
 , is a guardian or administrator referred to in
 paragraph (3),

and

- (v) in paragraph (8) —

- (I) by deleting subparagraph (b) and substituting the following subparagraph —

"
 (b) where the person proposing to be the next friend or guardian *ad litem*, as the case may be, of a represented person is authorized under Part 5 or Part 6 of the Act to conduct proceedings in the cause or matter in question in the name of the represented person or on his behalf, a copy of the order made under Part 5 or Part 6 of the Act giving such authority; and

- (II) in subparagraph (c) by deleting "patient is so authorized under Part VI of the Act, an affidavit by the solicitor for the person under a disability" and substituting the following —

"
 represented person is so authorized under Part 5 or Part 6 of the Act, an affidavit by the solicitor for the represented person

and

- (III) by repealing subparagraph (c) (ii).

(c) in Rule 4 —

(i) in paragraph (3) by repealing subparagraph (a) and substituting the following subparagraph —

“
 (a) in the case of a represented person, he is the guardian or administrator appointed under Part 5 or Part 6 of the Act to conduct legal proceedings in the name of the represented person;
 ”;

(ii) in paragraph (4) by deleting “not being the Public Trustee,”; and

(iii) in paragraph (5) by deleting “patient an office copy of the order under Part VI of the Act authorizing the next friend or guardian *ad litem* to conduct legal proceedings in the name of the patient” and substituting the following —

“
 represented person a copy of the order under Part 5 or Part 6 of the Act authorizing the next friend or guardian *ad litem* to conduct legal proceedings in the name of the represented person
 ”;

and

(d) in Rule 13 (4) by deleting subparagraphs (a) and (b) and substituting the following subparagraphs —

“
 (a) on the person (if any) who is authorized under Part 5 or Part 6 of the Act to conduct the proceedings in the name of the represented person or on his behalf; or
 (b) on the Public Trustee if the person is a represented person within the meaning of the *Public Trustee Act 1941*; or
 ”.

References to “patient” amended

4. (1) The principal rules are amended by deleting “patient” wherever it occurs in the provisions referred to in the Table to this Rule and substituting in each case the following —

“ represented person ”.

TABLE

Order 70 Rule 3 (8) (c)	Order 70 Rule 4 (3) (c)
Order 70 Rule 3 (8) (c) (i)	Order 70 Rule 13 (4)
Order 70 Rule 3 (8) (c) (iv)	Order 70 Rule 13 (4) (c)
Order 70 Rule 4 (3) (b)	Second Schedule Form No. 80

Dated the 20th day of June 1994.

DAVID MALCOLM.
 Judges' signatures
 G. A. KENNEDY.
 W. P. PIDGEON.
 B. ROWLAND.
 E. M. FRANKLYN.
 PAUL SEAMAN.
 R. NICHOLSON.
 TERENCE A. WALSH.
 D. A. IPP.
 H. WALLWORK.
 M. J. MURRAY.
 R. ANDERSON.
 N. J. OWEN.
 K. WHITE.
 GRAEME SCOTT.