

CROWN LAW

CW301

SUPREME COURT ACT 1935
SUPREME COURT AMENDMENT RULES 1993

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules 1993*.

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 18 March 1986 at pp. 779-1100
For amendments to 15 March 1993 see 1991 Index to Legislation
of Western Australia, pp.504-5 and Gazettes of 7 and 28 February,
5 June, 21 August and 30 October 1992 and 26 January 1993.]

Order 1 amended

3. Order 1 of the principal rules is amended —
- (a) by deleting the heading to Order 1 and substituting the following heading —

“ APPLICATION, ELIMINATION OF DELAY
AND FORMS ”,

and

- (b) after Rule 4 by inserting the following rules —

“ Elimination of delays

4A. The practice, procedure and interlocutory processes of the Court shall have as their goal the elimination of any lapse of time from the date of initiation of proceedings to their final determination beyond that reasonably required for interlocutory activities essential to the fair and just determination of the issues *bona fide* in contention between the parties and the preparation of the case for trial.

System of case flow management

4B. (1) Actions, causes and matters in the Court will, to the extent that the resources of the Court permit, be managed and supervised in accordance with a system of positive case flow management with the objects of —

- (a) promoting the just determination of litigation;
- (b) disposing efficiently of the business of the Court;
- (c) maximising the efficient use of available judicial and administrative resources; and
- (d) facilitating the timely disposal of business at a cost affordable by parties.

(2) These Rules are to be construed and applied and the processes and procedures of the Court conducted so as best to ensure the attainment of the objects referred to in paragraph (1).

Parties to notify settlement

4C. When any cause or matter is disposed of in whole or in part by settlement the solicitors for the parties to the settlement shall notify the Registrar in writing forthwith.

Order 29 repealed and an Order substituted

4. Order 29 of the principal rules is repealed and the following Order is substituted —

ORDER 29

CASE FLOW MANAGEMENT

POWERS OF THE COURT

Interpretation

1. In this Order, unless the contrary intention appears —

“Case Management Registrar” means a Registrar appointed by the Chief Justice under Rule 4 (1);

“Mediation Registrar” means a Registrar appointed by the Chief Justice under Rule 2 (r);

“standard times” means the standard times prescribed under Rule 4 (2).

Court may review any case

2. In any proceedings the Court may at any time of its own motion on notice to the parties or upon the hearing of a summons for directions or other application review the progress of the proceedings and make such orders or give such directions to lead to their efficient and timely disposal as it may consider just and expedient and, without limiting the generality of that power, may —

- (a) require the parties to any proceedings to attend before the Court;
- (b) dispense with pleadings altogether or order such pleadings as it deems appropriate;
- (c) direct the mode by which particular facts may be proved at trial;
- (d) order that evidence of any particular fact, to be specified in the order, shall be given at the trial by statement on oath of information and belief, or by production of documents or entries in books or by copies of documents or entries or otherwise as the Court may direct;
- (e) dispense with any interlocutory proceedings or steps;

- (f) require the parties or counsel to file and exchange memoranda before the hearing of any interlocutory proceeding in order to clarify the matters in issue before the hearing;
- (g) where appropriate deal with applications or hold conferences by way of a telephone or video conference link-up;
- (h) where appropriate deal with applications, and the evidence in relation to them, by way of telegram, facsimile, telex message, or courier post;
- (i) give directions to assist the convenience of the parties and witnesses;
- (j) make use of video tapes, film projection, computers and other equipment as the Court sees fit in the proceedings;
- (k) make arrangements for the more speedy and effective recording of evidence;
- (l) give directions as to the manner in which the parties shall defray the costs of giving effect to any directions under this Rule;
- (m) direct that a party serve on the other parties at such times as shall be directed, a signed written statement of the proposed evidence in chief of each witness to be called by that party;
- (n) direct that a signed written statement referred to in paragraph (m) or any part of it stand as the evidence in chief of the witness;
- (o) direct that a party intending to produce a plan, photograph or model at trial shall at a time to be directed, serve on the other party a notice in writing specifying the plan, photograph or model, stating where and when it may be inspected, and requiring the other party to serve upon him or her, within 7 days of service of the notice, a written notification agreeing or refusing to agree to the admission in evidence without further proof of the plan, photograph or model;
- (p) direct that where a party gives notification that he or she refuses to agree to the admission of a plan, photograph or model without further proof, and the plan, photograph or model is admitted into evidence at the trial as part of the case of the party serving the notice under paragraph (o), the party giving the notification shall pay any costs of proving the plan, photograph or model unless the trial judge otherwise orders;
- (q) on any terms suitable, direct at any time that the parties confer on a "without prejudice" basis for the purpose of resolving or narrowing the points of difference between them;
- (r) direct that a Registrar appointed by the Chief Justice to be the Mediation Registrar shall conduct the conference;
- (s) direct that experts, whose reports have been exchanged pursuant to Order 36A consult on a "without prejudice" basis, for the purpose of

narrowing any points of difference between the experts and identifying any remaining points of difference; and

- (t) require that an application for an adjournment be supported by the affidavits of such persons as the Court shall direct.

Mediation conferences

3. (1) In the absence of any other order —

- (a) mediation conferences will take place at the time and place as directed;
- (b) each party shall attend the conference or if a party is not a natural person, a representative of that party familiar with the substance of the litigation and with authority to compromise it, and the solicitor or counsel, if any, representing each party;
- (c) within 2 weeks after the conclusion of the conference, the plaintiff shall lodge with the Court a report, signed by or on behalf of each party —
- (i) confirming that the conference has occurred as directed; and
- (ii) recording the substance of any resolution or narrowing of the points of difference between the parties resulting from the conference.

(2) A Mediation Registrar may report to the Court on the failure by a party to co-operate in the mediation process.

Compliance with standard times

4. (1) A Registrar appointed by the Chief Justice to be the Case Management Registrar may exercise the powers conferred on him under this Rule.

(2) The powers shall be exercised on the basis that cases to which this Rule applies should be conducted in accordance with the standard times prescribed in the Table to this paragraph and that extensions of standard times should only be permitted for good reason which shall not include the consent of the parties.

TABLE
STANDARD TIMES

Item	Time
1. In an action — from the issue of the writ to entry for trial	9 months
2. In proceedings commenced by originating summons to which appearance is required — from the issue of the originating summons to application for the appointment for the attendance of the parties for the hearing of the summons	6 months

- (3) The Case Management Registrar has power —
- (a) to extend standard times of his own motion or upon the request in writing of a party;
 - (b) to call upon the parties to explain in writing why standard times have not been followed, at such times as he may require;
 - (c) to issue a summons to all the parties to the proceedings to explain why the entry or application for appointment has not occurred within the standard time and to direct the parties to file such affidavits in response to the summons at such times as he shall think fit;
 - (d) on the return of the summons referred to in subparagraph (c) to make an order extending the standard time in relation to the proceedings and make such orders as to the payment of the costs of the parties appearing before him on an indemnity basis to be fixed as he shall think fit, payable within 14 days;
 - (e) to exercise the powers as to self-executing orders and costs given under sub-paragraph (f) if a party fails to attend in obedience to a summons or affidavits are not filed by a party as directed;
 - (f) if the standard time is extended under subparagraph (d) but the entry or application for appointment does not occur within the extended time, to issue a further summons to the parties to explain why it has not occurred and to further extend the standard time and to give such further directions and make such further orders (other than for attachment or committal) to secure the occurrence of that event, including such self-executing orders for judgment, striking out pleadings or otherwise and such costs orders as he may consider necessary and in particular to exercise the powers of the Court under Order 66 Rule 5;
 - (g) for the purposes of this Order to exercise all the powers of the Court in relation to the admission of evidence and when there is no solicitor on the record for a party which is a body corporate, to permit a person who is not a solicitor to represent the body corporate.

(4) Where the Case Management Registrar makes a request under paragraph (3) (b) the parties and their solicitors shall provide him with the information he requires within the time specified and shall serve the same upon every other party.

(5) An appeal from an order or decision of the Case Management Registrar in the exercise of the powers referred to in paragraph (3) (c) may only be brought by leave of the Court.

(6) An application for leave to appeal from an order or decision referred to in paragraph (5) shall be made within 7 days after that order or decision is given.

Summons for directions

5. (1) A summons for directions may be taken out by any party in any cause or matter at any time before entry for trial or thereafter by leave of the Court, but if the defendant is required

to appear in the proceedings it may be taken out only after he has appeared.

(2) The summons shall specify the orders or directions which are sought.

Directions hearings

6. (1) The parties to proceedings and their advisers shall give such information and produce such documents on any directions hearing as the Court may reasonably require, unless the information or documents are subject to privilege.

(2) The Court shall adjourn any directions hearing from time to time until the conclusion of the cause or matter.

(3) Where practicable a party shall apply at the hearing of the summons for any order or directions which he may desire in relation to any matter capable of being dealt with on an interlocutory application in the action and shall give the other parties 2 clear days' notice specifying those orders or directions which differ from the orders or directions sought by the summons.

(4) Any application subsequent to a summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons on 2 clear days' notice to any other party stating the ground of the application and specifying the orders or directions sought.

Order 43 amended

5. Order 43 of the principal rules is amended in Rule 16 —

(a) in paragraph (1) by inserting after "those proceedings" the following —

" , other than an order extending a standard time provided for under Order 29 ";

and

(b) in paragraph (2) by deleting "shall" and substituting the following —

" may settle, sign and seal the order without any other application being made in any case in which in his opinion the Court would make such an order upon consent of the parties or may "

Order 66 amended

6. Order 66 of the principal rules is amended in Rule 44 —

(a) in paragraph (f) by deleting "solicitor." and substituting the following —

" solicitor; "; and

(b) after paragraph (f) by inserting the following paragraphs —

" (g) exercise all the powers of the Court in relation to the admission of evidence;

- (h) where a solicitor is not on the record for a party which is a body corporate to permit a person who is not a solicitor to represent the body corporate on the taxation. ”.

Order 67 amended

7. Order 67 of the principal rules is amended in Rule 9 (2) by deleting “books” and substituting the following —

“ records ”.

Dated the 17th day of March 1993.

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