

CROWN LAW

CW301

SUPREME COURT ACT 1935

SUPREME COURT AMENDMENT RULES (NO. 4) 1993

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules (No. 4) 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 2 August 1993 see 1992 Index to Legislation of Western Australia, Table 4, pp.261-3 and Gazettes of 26 January, 26 March, 20 April and 29 June 1993.]

Order 37 amended

3. Order 37 of the principal rules is amended in Rule 1 by inserting after paragraph (3) the following paragraph —

“

(4) An affidavit may be sworn for use in proceedings which are yet to be commenced and must be entitled in the intended cause or matter.

”

Order 75A inserted

4. After Order 75 of the principal rules the following Order is inserted —

“

ORDER 75A**ADMISSION OF PRACTITIONER UNDER SECTION 22 (2)
OF THE *LEGAL PRACTITIONERS ACT 1893*****Interpretation**

1. In this Order unless the contrary intention appears —

“applicant” means an interstate applicant who seeks to be admitted pursuant to section 22 (2) of the *Legal Practitioners Act 1893*;

“supplementary roll of practitioners” means the supplementary roll of practitioners held at the Central Office;

“the Act” means the *Legal Practitioners Act 1893*.

Application to the Full Court

2. (1) An application under this Order shall be made to the Full Court *ex parte* by motion supported by an affidavit —

- (a) which verifies the dates of publication of the notice of the intention of the applicant to apply for admission required under Rule 53 (c) of the *Barristers' Board Rules 1949*; and
- (b) to which the certificate of fitness of the applicant required under Rule 54 of the *Barristers' Board Rules 1949* shall be annexed.

(2) The motion and the supporting affidavit must be filed in the Central Office not less than 3 clear days before the proposed date of admission.

Applicant to attend office of superior court referred to in section 22 (2) of the Act

3. Within 21 days of admission the applicant shall attend the office of a superior court referred to in section 22 (2) of the Act —

- (a) take an oath or affirmation in accordance with the form set out in Rule 5; and
- (b) sign the supplementary roll of practitioners,

before the Principal Registrar, a Registrar, a Deputy Registrar or the Prothonotary of that court.

Entry on Roll of Practitioners

4. The name of an applicant admitted under section 22 (2) of the Act will be entered on the Roll of Practitioners in the usual order with the endorsement “see supplementary roll of practitioners” beside the name of the practitioner.

Oath or affirmation

5. The oath or affirmation referred to in Rule 3 may be taken in either of the following forms —

OATH

I, [name] of [address] do swear that I will truly and honestly demean myself in the practice of a barrister and solicitor of the Supreme Court of Western Australia according to the best of my knowledge and ability,

So help me God!

AFFIRMATION

I, [name] of [address] do solemnly and sincerely declare and affirm that I will truly and honestly demean myself in the practice of a barrister and solicitor of the Supreme Court of Western Australia according to the best of my knowledge and ability.

”

Order 81F inserted

5. After Order 81E of the principal rules the following Order is inserted —

“

ORDER 81F**CONFISCATION OF PROFITS OF CRIME****PART 1 — PRELIMINARY****Interpretation**

1. In this Order unless the contrary intention appears “the Act” means the *Crimes (Confiscation of Profits) Act 1988* and words defined in section 3 of the Act and used in this Order have the same respective meanings as in the Act.

Application of this Order

2. (1) An application under the Act shall be made under this Order, unless the application is made —

- (a) following the conviction of a person; and
- (b) to the Judge with the obligation to sentence the person for that conviction.

(2) Whenever this Order requires that an application, or a pending proceeding, under the Act shall be made by an originating summons, the method by which notice is given, for the purposes of the Act, is by service of the summons, together with a copy of the affidavit referred to in Rule 3, on the relevant person.

(3) This Order applies, with any necessary modification, to applications under the *Proceeds of Crime Act 1987* of the Commonwealth.

Affidavits in support

3. (1) Unless the Court otherwise orders, every application required under this Order for an order under the Act, which is to be made by originating summons or ordinary summons, shall be filed and served on the relevant person, together with an affidavit setting forth the facts and circumstances upon which the application is based.

(2) These provisions do not apply to applications made under section 20 of the Act.

Summons for directions

4. (1) Whenever an application is required by this Order to be commenced by originating summons in Form 74 the plaintiff must apply on summons to the Court for directions within 7 days after the time limited for appearance.

(2) Where the plaintiff fails to comply with paragraph (1) a defendant may apply.

Powers of the Court as to directions

5. On the hearing of any summons for directions, or upon any other application, or of its own motion at any time, the Court may —

- (a) inquire as to the persons who may be affected by the relief which the plaintiff seeks and for the purpose of that inquiry direct the plaintiff and defendant to supply any information which the Court may require;
- (b) give directions as to the persons to be added as parties as being interested in the relief claimed or to represent classes of persons so interested;
- (c) direct that notice of the application be served on any person;
- (d) give any other directions or make any other orders as may be necessary for the just and expeditious disposal of the application.

Representative defendant

6. Where a person has been added as a defendant and other persons have the same or a similar interest as that defendant, the court may order that —

- (a) that defendant be authorized to defend the proceedings on behalf of or for the benefit of all persons so interested (including an unborn person);
and
- (b) all persons so interested shall be bound by any order made in the proceedings.

**PART 2 — APPLICATIONS TO BE BROUGHT BY
ORIGINATING SUMMONS WITH APPEARANCE****Procedure for application for confiscation orders**

7. (1) An application for a confiscation order under the Act shall be commenced by originating summons in Form 74.

(2) The appropriate officer shall be the plaintiff and the person charged with or convicted of a serious offence and, in the case of an application for a forfeiture order, the other persons referred to in section 7 (1) (a) of the Act shall be the defendants.

Restraining Orders on notice

8. (1) An application for a restraining order under the Act (unless made in pending proceedings) shall be commenced by originating summons in Form 74.

(2) The appropriate officer shall be the plaintiff and the person convicted of or charged or about to be charged with a serious offence and the other persons referred to in section 20 (3) of the Act shall be the defendants.

(3) An application for a restraining order in pending proceedings shall be by summons.

(4) Where the applicant has reason to believe that a person may have an interest in the property in respect of which the applicant seeks a restraining order and that person is not a party to the pending proceedings, the applicant shall apply for directions with respect to —

- (a) giving notice to that person; or
- (b) adding that person as a defendant.

Restraining orders *ex parte*

9. (1) In an urgent case an application for a restraining order may be made upon notice of motion *ex parte*.

(2) If a restraining order is made *ex parte* in respect of the property of a person the applicant must forthwith serve notice in writing of the substance of the order upon the person and promptly thereafter serve upon the person a sealed copy of the order.

PART 3 — APPLICATIONS TO BE BROUGHT BY ORIGINATING SUMMONS WITHOUT APPEARANCE

Return of seized property

10. (1) An application for the return of or access to property under section 35 (5) of the Act shall be commenced by originating summons in Form 75.

(2) The applicant shall be the plaintiff and the Commissioner of Police shall be the defendant.

Variation of production order

11. (1) An application to vary a production order under section 38 of the Act shall be commenced by originating summons in Form 75.

(2) The applicant shall be the plaintiff and the police officer who obtained the order shall be the defendant.

Applications to cancel interstate registration

12. An application to cancel the registration of an interstate restraining order may be made —

- (a) upon the filing of a written consent to its cancellation signed by the person on whose application the order was made or by an appropriate officer; or
- (b) by originating summons in Form 75 in which the person seeking the cancellation shall be the plaintiff and the person on whose application the order was made shall be the defendant.

PART 4 — APPLICATIONS TO BE BROUGHT BY SUMMONS

Further orders in relation to restraining orders

13. (1) A person who could have applied for a restraining order, but did not, and who seeks further orders in relation to the restraining order under section 22 (1) or section 23 (3) of the Act may not apply for further orders until he or she has been joined as a party to the proceedings.

(2) An application under section 22 (1) or section 23 (3) of the Act shall be by summons.

(3) If any person referred to in section 22 (2) (b) to (d) or section 23 (5) of the Act is not a party to the proceedings, the applicant shall 7 days before the return day of the summons personally serve upon each person written notice that he or she has made the application, together with a copy of the summons.

(4) If the summons is brought pursuant to section 23 (3) of the Act the notice shall inform the person that he or she is entitled to appear and give evidence at the hearing of the summons.

Re-hearing

14. (1) A person may not apply to set aside a confiscation order under section 19 of the Act until he or she has been joined as a party to the proceedings in which the confiscation order was made.

(2) The application to set aside shall be made by the applicant by summons.

(3) Notice shall be given to the Attorney General by serving a copy of the summons in support upon the Crown Solicitor within 7 days of issue.

Applications to discharge forfeiture orders

15. (1) An application under section 12 (1) of the Act shall be made by summons in the proceedings which resulted in the making of the forfeiture order and the Attorney General shall be named as a defendant in the title of the summons and all other proceedings in or related to the application.

(2) Service is effected on the Attorney General by serving the summons on the Crown Solicitor.

Declarations of value

16. (1) An application under section 14 (1) (b) of the Act shall be made by summons in the proceedings which resulted in the making of the forfeiture order.

(2) Service is effected on the Attorney General by serving the summons on the Crown Solicitor.

Declaration of available property

17. (1) An application under section 17 (3) of the Act by the Attorney General shall —

- (a) be commenced by summons in the proceedings in which the pecuniary penalty order is sought; and
- (b) apply for leave to add as a defendant any person who he or she has reason to believe may have an interest in the property in respect of which a declaration is sought.

(2) If a person referred to in paragraph (1) is added as a defendant he or she shall be served personally with the amended originating summons and copies of all affidavits filed in respect of the summons including any affidavit in support of the summons referred to in paragraph (1).

(3) Within 7 days from the time limited for appearance by the added defendant the Attorney General shall apply for further directions under Rule 4.

PART 5 — MISCELLANEOUS**Register of interstate restraining orders**

18. (1) A register to be called "The Register of Interstate Restraining Orders" shall be kept in the Central Office.

(2) A person desiring to register an interstate restraining order shall file a copy thereof sealed by the seal of the court which made the order.

(3) Upon the filing of the sealed copy of the interstate restraining order the proper officer shall assign a number to it, enter the particulars in the register and endorse the order with the words "registered on the..... day of 19..".

(4) Upon the making of an order cancelling the registration of an interstate order under section 49 (1) of the Act the cancellation shall be entered in the Register.

Discharge of registered pecuniary penalty order

19. Upon the discharge of a pecuniary penalty order which has been registered under the *Service and Execution of Process Act 1901* of the Commonwealth, the party who caused the order to be registered shall forthwith —

- (a) give written notice stating —
 - (i) that the order has been discharged; and
 - (ii) the date of the order of discharge;
- and

- (b) forward a sealed copy of the order of discharge,

to the Registrar or other proper officer of every court in which the order was registered.

Facsimile copies of interstate orders

20. For the purposes of section 52 of the Act a facsimile copy shall be certified by the Registrar or other proper officer of the court which made the order that it is a true copy of a sealed copy of that order.

Examination before Supreme Court

21. The officer of the Supreme Court for the purposes of section 22 (4) (c) of the Act is a Registrar.

Fifth Schedule amended

6. The Fifth Schedule to the principal rules is amended in Part 1 —

- (a) by deleting item 2 and substituting the following item —

"

- 2. Registering a certificate or judgment in proceedings under the *Service and Execution of Process Act 1992* of the Commonwealth. 40.00

"

- (b) in item 10 after paragraph (g) by inserting the following paragraph —

“

- (h) For a certificate under
the hand of a Registrar 20.00 ”.

Dated the 23rd day of August, 1993.

W. P. PIDGEON J.
B. ROWLAND J.
E. M. FRANKLYN J.
R. D. NICHOLSON J.
TERENCE A. WALSH J.
D. IPP J.
H. WALLWORK J.
M. J. MURRAY J.
K. WHITE J.
R. J. M. ANDERSON J.
GRAEME SCOTT J.
N. J. OWEN J.

I concur in the foregoing rules and order—

R. F. COURT, Treasurer.
