

CROWN LAW**CW301****SUPREME COURT ACT 1935****SUPREME COURT AMENDMENT RULES (No. 2) 1991**

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules (No. 2) 1991*.

Commencement

2. These rules come into operation on the day on which sections 15 to 20 of the *Justices Amendment Act 1989* come into operation.

Principal rules

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

[*Reprinted in the Gazette on 18 March 1986 at pp. 779-1100. For amendments to 25 February 1991 see pp. 358-359 of 1989 Index to The Statutes of Western Australia and Gazettes of 23 February, 30 March 1990, 17 August 1990, 24 August 1990 (erratum) and 9, 16 and 30 November 1990.]

Order 65A inserted

4. After Order 65 of the principal rules, the following Order is inserted—

“

ORDER 65A**APPEALS UNDER JUSTICES ACT 1902****Interpretation**

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

(a) words used have the definitions assigned to them by sections 4 and 183 of the *Justices Act 1902*; and

(b) the following further definitions apply—

“party” includes a person to whom a Judge has directed under section 191 (b) of the Act that notice of an appeal be given; and

“the Act” means the *Justices Act 1902*.

(2) Subject to the Act and this Order, the rules of Court apply to this Order.

Application for leave

2. An application for leave to appeal shall—

(a) be made in the form of Form 82A in the Second Schedule and shall state briefly but specifically the grounds relied upon;

(b) be made within 21 days after the day on which the decision to which the application relates was given; and

(c) be supported by an affidavit of the facts relied on.

Further evidence

3. (1) An application for leave to adduce further evidence under section 196 (1) (b) of the Act shall be made by notice of motion supported by an affidavit showing the nature of the evidence and the basis on which the court will be asked to receive it.

(2) The notice of motion shall be served on every other party to the appeal.

Security for costs

4. Subject to section 219 of the Act, a Judge may, in special circumstances, order that security shall be given for the costs of an appeal as may be just, and may vary or revoke any such order.

Manner of giving notice to other parties etc.

5. Notice under section 191 of the Act shall be given—

(a) within 10 days after the day on which leave to appeal is granted or within such longer period as the Judge who grants leave may allow; and

(b) by serving on every party, a copy of the application for leave, the order granting leave and the affidavits and documents filed in support of the application.

Notice to clerk of petty sessions etc.

6. (1) The Registrar shall, as soon as is practicable after leave is granted, send to each of the following persons a memorandum as to the making of the order granting leave—

(a) the clerk of petty sessions, and attach a copy of the application for leave;

(b) any person having the appellant in custody; and

(c) the Commissioner of Police where the decision that is subject to appeal was made in, or in relation to, proceedings for a charge for an offence.

(2) Where the appellant is in a prison, it is sufficient compliance with subparagraph (b) of paragraph (2) for notice under that subparagraph to be given to the chief executive officer of the Department, as defined in section 3 of the *Prisons Act 1981*.

Action to be taken by clerk

7. The clerk of petty sessions to whom notice is given under rule 6 (1) shall, as soon as is practicable—

- (a) give a copy of the application and order to the justices whose decision is subject to appeal; and
- (b) subject to section 206B (5) of the Act, transmit to the Registrar all documents constituting the record of the court of petty sessions in relation to the subject matter of the appeal including all exhibits and any note or transcript of evidence or of the reasons for decision.

Notice of Intention to be Heard

8. (1) A party who wishes to be heard on the hearing of the appeal shall file a notice of intention to be heard, and serve a copy of the notice on the other parties on the day on which it is filed or as soon as is practicable after that day.

(2) The notice shall be filed within 14 days of service on the party of notice under rule 5.

(3) This rule does not apply to a party who gives notice under rule 9.

(4) A party who has not given notice in accordance with this rule shall not be heard without the leave of the Court.

Orders 63 and 65 apply

9. Subject to the Act and this Order, the provisions of Order 63 and Order 65 apply with necessary modifications to appeals under this Order.

Notification of result of appeal by Registrar

10. (1) The Registrar shall, in addition to complying with section 202 of the Act, send a memorandum of the determination of the Court on an appeal or of the dismissal of an appeal under section 205 of the Act—

- (a) to the Commissioner of Police, where the decision that was subject to appeal was made in, or in relation to, proceedings for a charge for an offence;
- (b) to any other person having the appellant in custody;
- (c) where any party to the appeal is on bail pending the disposition of the appeal, to the chief executive officer of the Department as defined in section 3 of the *Prisons Act 1981*; and
- (d) to any party to the appeal who—
 - (i) was not present, or represented by a legal practitioner, at the hearing or was not an applicant under section 206B, as the case may be; and
 - (ii) has filed under rule 8 a notice of intention to be heard.

(2) Where the appellant is in a prison, it is sufficient compliance with subparagraph (b) of paragraph (1), for notice under that subparagraph to be given to the chief executive officer of the Department as defined in section 3 of the *Prisons Act 1981*.

Application for re-instatement of appeal

11. An application by an appellant under section 206 (1) of the Act shall be made—

- (a) in the form of form 82B in the Second Schedule;
- (b) within 21 days of service on the appellant of a memorandum under rule 10 as to the dismissal of the appeal under section 205 of the Act;
- (c) *ex parte* (unless the Judge orders that the application be served on any person) and supported by an affidavit of the facts relied on and stating the grounds of the application.

Appeal to Full Court

12. (1) An application under section 206A of the Act for leave to appeal to the Full Court from a decision of the Court constituted by one Judge shall be made within 21 days after the day on which that decision was given.

(2) Notice of the application shall be given by the applicant—

- (a) to the other party or parties to the appeal; or
- (b) where the application for leave relates to an application under section 206C to extend or shorten the time allowed under rule 2 (b), to the other party or parties to the decision of the justices,

within the period allowed under paragraph (1).

Orders for costs

13. (1) Where under Part VIII of the Act the Court may make an order as to costs, the Court may—

- (a) fix the sum to be paid;
- (b) order that the sum be determined by taxation; or
- (c) make an order providing partly for one of those methods and partly for the other.

(2) If the Court intends to make an order pursuant to section 5 of the *Official Prosecutions (Defendant Costs) Act 1973* it may, if it thinks fit, refer to a Registrar for inquiry and report the amount at which the costs shall be fixed.

(3) Upon such an inquiry the Registrar shall have power to require that the defendant furnish details of the costs, allowances and expenses claimed, and that such details be verified by affidavit.

Service

14. (1) Where any provision of Part VIII of the Act or of these rules authorizes or requires a document in any proceedings to be served on, or a notice to be given to, a person the service or the giving of notice may be effected—

- (a) by personal service on the person;
- (b) by properly addressing and posting (by pre-paid post) the document as a registered letter to the last-known place of residence or place of business of the person; or
- (c) by leaving the document at the place of residence of the person with a member of the person's family living with him or her and appearing to be of or over the age of 16 years; or
- (d) without limiting section 215 of the Act, by serving the document, in accordance with subparagraph (a) or (b), on a solicitor who is acting for the person in the proceedings.

(2) Personal service of a document is effected on a person for the purposes of paragraph (1) (a) by leaving a copy of the document with the person and if so requested by the person at the time when it is left showing him or her an office copy of the document.

(3) For the purposes of paragraph (1) (b) service or the giving of notice is deemed to be effected under that paragraph, unless the contrary is proved, at the time when the letter would have been delivered in the ordinary course of post.

Substituted service

15. (1) Where the Court is satisfied, upon application by a party sufficiently supported by affidavit evidence, that it is impracticable for a document to be served on, or a notice to be given to, a person in accordance with rule 14, it may order that service be effected or notice be given by the taking of such steps as the Court directs.

(2) Compliance with an order under paragraph (1) is to be taken to be personal service under rule 14 (1) (a). "

Order 83A amended

5. Order 83A of the principal rules is amended, in rule 1, by inserting after paragraph (4) the following paragraph—

" (5) No fees shall be charged in respect of proceedings under Part VIII of the *Justices Act 1902*. "

Order 84 amended

6. Order 84 of the principal rules is amended, in rule 8, by repealing paragraph (1) and substituting the following—

" (1) The Registrar shall, as soon as is practicable after he has sent a memorandum under section 202 of the *Justices Act 1902* to the clerk of petty sessions, send to that clerk a copy of any reasons given by the Court or the Full Court for its decision. "

Second Schedule amended

7. The Second Schedule to the principal rules is amended by inserting after Form 82 the following Forms—

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No. 82A

APPLICATION FOR LEAVE TO APPEAL

O.65A, r. 2 (a)

No. of 19

In the Matter of the *Justices Act 1902*

and

In the Matter of the Complaint(s) No(s) of
19 [or as the case may be] in the Court of
Petty Sessions at between

..... and
BETWEEN

Applicant

and

Respondent

APPLICATION FOR LEAVE TO APPEAL

1. The applicant applies to the Judge in Chambers on the day of 19 at o'clock in the noon for leave to appeal from [specify part or the whole] of the decision(s) given on the abovementioned complaint(s) on the day of 19 upon the following grounds—

2. The applicant is not in custody (is in custody, held at Prison).
Dated the day of 19

(Signed, Solicitor or Applicant).

No. 82B

APPLICATION FOR RE-INSTATEMENT OF APPEAL

O.65A, r. 10 (a)

No. of 19

In the Matter of the *Justices Act 1902*

and

In the Matter of the Complaint(s) No(s) of
19 [or as the case may be] in the Court of
Petty Sessions at between

..... and
BETWEEN

Applicant

and

Respondent

APPLICATION FOR RE-INSTATEMENT OF APPEAL

1. The applicant applies pursuant to section 206 (1) of the *Justices Act 1902* to the Judge in chambers on the day of 19 at o'clock in the noon to re-instate this appeal.

2. The grounds of the application are

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Dated the day of 19^p

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(Signed, Solicitor or Applicant).

Dated this 22nd day of March, 1991.

DAVID K. MALCOLM.
W. P. PIDGEON.
B. ROWLAND.
E. M. FRANKLYN.
PAUL SEAMAN.
R. D. NICHOLSON.
TERENCE A. WALSH.
D. A. IPP.
HENRY WALLWORK.
M. J. MURRAY.
R. J. OWEN.
K. WHITE.
