

CW302

SUPREME COURT ACT 1935

SUPREME COURT AMENDMENT RULES (No. 3) 1991

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules (No. 3) 1991*.

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 28 February 1990 see pp. 358-359 of 1989 Index to Legislation of Western Australia and Gazettes of 23 February, 30 March 1990, 17 August (erratum), 24 August and 9, 16 and 30 November 1990.]

Order 24 amended

3. Order 24 of the principal rules is amended by repealing Rules 1 to 8 and Rule 10.

Order 24A inserted

4. After Order 24 of the principal rules the following order is inserted—

“

ORDER 24A

OFFER OF COMPROMISE

Mode of making offer

1. (1) An offer of compromise is made to a party under this Order by serving a notice of the offer on the party.
(2) A notice of offer shall—
 - (a) be in writing; and
 - (b) bear a statement to the effect that the offer is made under this Order.

Application

2. In any proceedings the plaintiff or the defendant may make to the other an offer to compromise any claim in the proceedings on the terms specified in the notice of offer.

Time for making or accepting offer

3. (1) An offer may be made at any time before the time prescribed by paragraph (8) in respect of the claim to which it relates.

(2) A party may make more than one offer.

(3) An offer may be expressed to be limited as to the time it is open to be accepted but the time expressed shall not be less than 28 days after it is made.

(4) An offeree shall, within 3 days after service, serve a written acknowledgment of receipt on the offeror.

(5) An offeree may accept the offer by serving notice of acceptance in writing on the offeror before—

(a) the expiration of the time specified in accordance with paragraph (3) or, if no time is specified, the expiration of 28 days after the offer is made; or

(b) the time prescribed by paragraph (8) in respect of the claim to which the offer relates,

whichever is sooner.

(6) An offer shall not be withdrawn during the time it is open to be accepted, unless the Court otherwise orders.

(7) An offer is open to be accepted within the period referred to in paragraph (4) notwithstanding that during that period the party to whom the offer (the "first offer") is made makes an offer (the "second offer") to the party who made the first offer whether or not the second offer is made in accordance with this Order.

(8) The time prescribed for the purposes of paragraphs (1) and (5) is—

(a) where the trial is before a jury—after the Judge begins to sum up to the jury; or

(b) in any other case—after the Judge or master gives his decision or begins to give his reasons for decision on a judgment (except an interlocutory judgment).

(9) Where an offer is accepted under this Rule, any party to the compromise may enter judgment accordingly.

Time for payment

4. An offer to pay a sum of money to a plaintiff shall, unless the notice of offer otherwise provides, be taken to be an offer to pay that sum within 28 days after acceptance of the offer.

Withdrawal of acceptance

5. (1) A party who accepts an offer may, by serving a notice of withdrawal on the offeror, withdraw the acceptance—

(a) where the offer provides for payment of a sum of money and the sum is not paid into Court within 28 days after acceptance of the offer; or

(b) where the Court gives leave so to do.

(2) On withdrawal of an acceptance all steps in the proceedings taken in consequence of the acceptance shall have such effect only as the Court may direct.

(3) On withdrawal of an acceptance or on the motion for leave to withdraw an acceptance, the Court may—

(a) give directions under paragraph (2);

(b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and

(c) give directions for the further conduct of the proceedings.

Offer without prejudice

6. An offer made in accordance with this Order shall be taken to have been made without prejudice, unless the notice of offer otherwise provides.

Disclosure of offer to Court

7. (1) No statement of the fact that an offer has been made shall be contained in any pleading or affidavit.

(2) Where an offer has not been accepted, then, except as provided by Rule 10 (8), no communication with respect to the offer shall be made to the Court at the trial until after all questions of liability and the relief to be granted have been determined.

(3) This Rule shall not apply where a notice of offer provides that the offer is not made without prejudice.

Failure to comply with accepted offer

8. (1) Where a party to an accepted offer fails to comply with the terms of the offer, then, unless for special cause the Court otherwise orders, the other party shall be entitled, as he may elect, to—

- (a) judgment in the terms of the accepted offer; or
- (b) where the party in default is the plaintiff, an order that the proceedings be dismissed, and, where the party in default is the defendant, that the defence be struck out, and in either case to judgment accordingly.

(2) Where a party to an accepted offer fails to comply with the terms of the offer, and a defendant in the proceeding has made a cross-claim which is not the subject of the accepted offer, the Court may make such order or give such judgment under paragraph (1) and make such order that the proceeding on the cross-claim be continued as it thinks fit.

Multiple defendants

9. Where 2 or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a debt or damages and rights of contribution or indemnity appear to exist between the defendants, Rule 8 shall not apply to an offer unless—

- (a) in the case of an offer made by the plaintiff—the offer is made to all defendants, and is an offer to compromise the claim against all of them;
- (b) in the case of an offer made to the plaintiff—
 - (i) the offer is to compromise the claim against all defendants; and
 - (ii) where the offer is made by 2 or more defendants—by the terms of the offer the defendants who made the offer are jointly or jointly and severally liable to the plaintiff for the whole amount of the offer.

Costs

10. (1) Upon the acceptance of an offer of compromise in accordance with Rule 3 (5), the plaintiff may, unless the Court otherwise orders, tax his costs in respect of the claim against the defendant up to and including the day the offer was accepted and, if the costs are not paid within 4 days after the signing of a certificate of the taxation, enter judgment against that defendant for the taxed costs.

(2) If a notice of offer contains a term which purports to negative or limit the operation of paragraph (1), that term shall be of no effect for any purpose under this Order.

(3) Paragraphs (4) to (6) apply to an offer which has not been accepted in the time prescribed by Rule 3 (8).

(4) Where an offer is made by a plaintiff and not accepted by the defendant, and the plaintiff obtains judgment on the claim to which the offer relates no less favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for his costs in respect of the claim from the date on which the offer was made, taxed on a party and party basis in addition to his costs incurred before that date, taxed on a party and party basis.

(5) Where an offer is made by a defendant and not accepted by the plaintiff, and the plaintiff obtains judgment on the claim to which the offer relates not more favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall be entitled to an order against the defendant for his costs in respect of the claim up to and including the day the offer was made, taxed on a party and party basis, and the defendant shall be entitled to an order against the plaintiff for his costs in respect of the claim thereafter, taxed on a party and party basis.

(6) For the purpose of paragraph (5), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the Court otherwise orders, the plaintiff shall be entitled to his costs in respect of the claim up to 11 a.m. on the day following the day on which the offer was

made, taxed on a party and party basis, and the defendant shall be entitled to his costs in respect of the claim thereafter, taxed on a party and party basis.

(7) Where a plaintiff obtains judgment for the payment of a debt or damages and—

(a) the amount for which judgment is given includes interest or damages in the nature of interest; or

(b) by or under any Act the Court awards the plaintiff interest or damages in the nature of interest in respect of the amount,

then, for the purpose of determining the consequences as to costs referred to in paragraphs (4) and (5), the Court shall disregard so much of the interest as relates to the period after the day the offer was made.

(8) For the purpose of paragraph (7), the Court may be informed of the fact that the offer was made, and of the date on which it was made, but shall not be informed of its terms.

(9) Paragraphs (4) and (5) shall not apply unless the Court is satisfied by the party making the offer that the party was at all material times willing and able to carry out what the party offered. ”.

Third Schedule amended

5. The Third Schedule to the principal rules is amended by repealing clause 5.

Dated the 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. ANDERSON.
R. J. OWEN.
K. WHITE.