

SUPREME COURT ACT 1935**SUPREME COURT AMENDMENT RULES (No. 2) 1990**

Made by the Judges of the Supreme Court.

Citation

1. These rules may be cited as the *Supreme Court Amendment Rules (No. 2) 1990*.

Order 31A inserted

2. The *Rules of the Supreme Court 1971** are amended by inserting after Order 31 the following order—

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**ORDER 31A
EXPEDITED LIST**

Interpretation

1. In this Order—

“Expedited List” means a list of expedited causes kept by the Principal Registrar;

“Expedited List Judge” means a judge appointed by the Chief Justice;

“Expedited Proceeding” means a cause or matter entered in the Expedited List.

Entry into Expedited List

2. (1) A cause or matter shall not be entered in the Expedited List except upon the order of an Expedited List Judge.

(2) Any party to cause or matter, may at any time after the commencement of the cause or matter, call upon the other party or parties to show cause before an Expedited List Judge in Chambers, why the cause or matter should not be entered in the Expedited List.

(3) An Expedited List Judge may order the cause or matter to be so entered.

(4) A party which desires to have a cause or matter entered in the Expedited List shall apply for entry at the earliest possible time by summons on notice to the other parties supported by an affidavit setting out, in summary form—

(a) the nature of the dispute;

(b) the issues likely to arise;

(c) the basic contentions between the parties, if known; and

(d) the reasons why the cause or matter should be entered in the Expedited List.

Heading of documents

3. The heading of every document filed or issued in an Expedited Proceeding shall show the words “Expedited List”.

Timetable

4. (1) Within 7 days after the day of the making of an order entering a cause or matter in the Expedited List, the party obtaining the order shall file and serve a summons for directions pursuant to Order 29 Rule 1.

(2) The application shall include a timetable for all steps necessary for an expedited trial of the Expedited trial of the Expedited Proceeding, as well as all other directions sought.

(3) A party who has been served with an application for directions under paragraph (1) shall, 2 clear days before the return day of the summons for directions, file and serve on the applicant and all other parties to the Expedited Proceeding a memorandum stating—

- (a) the directions to which the party consents;
- (b) the directions which the party intends to oppose;
- (c) where the party intends to oppose a direction, a brief statement of the grounds of opposition;
- (d) whether or not the party intends to oppose the proposed timetable;
- (e) where the party intends to oppose the proposed timetable, a brief statement of the grounds of opposition;
- (f) any modification suggested by the party to the proposed timetable; and
- (g) any directions sought by the party.

Directions

5. (1) An Expedited List Judge may, at any time, of his own motion require the parties to an Expedited Proceeding to attend a directions hearing.

(2) An Expedited List Judge may, at any time, of his own motion, exercise the powers contained in Order 3 Rule 5.

(3) An Expedited List Judge may, of his own motion or otherwise, give any directions which could be given by the Court under Order 29 Rule 2, and may give any procedural directions as he thinks fit, whether or not inconsistent with any other provision of these Rules, for the speedy and inexpensive determination of the real questions between the parties.

(4) Without limiting the generality of paragraph (3), an Expedited List Judge may—

- (a) dispense with other pleadings or further pleadings;
- (b) dispense with any interlocutory proceedings or steps;
- (c) require the parties or counsel to file and exchange memoranda before any hearing of the Expedited Proceeding in order to clarify the matters in issue before the hearing;
- (d) where appropriate deal with applications or hold conferences by way of a telephone or video conference link-up;
- (e) where appropriate deal with applications, and the evidence in relation to them, by way of telegram, facsimile, telex message, or courier post;
- (f) give directions to assist the convenience of the parties and witnesses;
- (g) change the venue of the trial, or adjourn the trial part heard to continue at a different venue;
- (h) make use of video tape, film projection, computers and other equipment as he sees fit in the proceeding;
- (i) make arrangements for the more speedy and effective recording of evidence;
- (j) appoint any person authorized in law to administer an oath to any witness giving evidence in any manner envisaged by this Rule; and
- (k) give directions as to the manner in which the parties shall defray the costs of giving effect to any direction under this paragraph.

(5) A direction under this Rule shall not be enforceable by writ of attachment of order of committal.

(6) Any interlocutory order or direction made by an Expedited List Judge may be varied or revoked, in whole or in part, by an Expedited List Judge or by the Court at the trial.

(7) An Expedited List Judge may hear any interlocutory matter relating to an Expedited Proceeding, or may refer the matter to another Judge or Master for hearing who shall exercise all powers of the Expedited List Judge.

Amendment to pleadings

6. (1) Unless an Expedited List Judge otherwise orders—

- (a) any party to an Expedited Proceeding may without leave amend any pleading filed within 7 weeks before the day fixed for the commencement of the trial; and
- (b) any other party may without leave make consequential amendments within 7 working days from service of the amendment.

(2) Within 7 days after the service on a party of a pleading amended under this Rule that party may apply to the Expedited List Judge to disallow the amendment.

(3) Where the Expedited List Judge hearing an application under this Rule is satisfied that if an application to make the amendment in question had been made under Order 21 Rule 5 at the date when it was made under this Rule, leave to make the amendment or part of the amendment would have been refused, he shall order the amendment or that part of it to be struck out.

(4) Any order made on an application under this Rule may be made on such terms as to costs as the Expedited List Judge thinks fit.

(5) The Expedited List Judge shall, when exercising his discretion to grant or refuse leave to make an amendment, take into account any injustice that may be caused by the amendment, directly or indirectly, affecting the position of the Expedited Proceeding in question in the Expedited List.

Adjournments

7. If an application is made to an Expedited List Judge or the Court at the trial for an adjournment of the trial of an Expedited Proceeding, the judge, when exercising his discretion under Order 34 Rule 4 shall take into account any injustice that may be caused by the adjournment affecting the position of the Expedited Proceeding in the Expedited List.

Interrogatories

8. (1) Order 27 Rule 1 (1) and (5) shall not apply to an Expedited Proceeding.

(2) An Expedited List Judge may, in his discretion, give leave to any party to an Expedited Proceeding to file and serve upon any other party, within the period limited by the Expedited List Judge for this purpose, a notice requiring the party served to answer interrogatories relating to any matter in question between the interrogating party and the party served.

(3) A party required under paragraph (2) to answer interrogatories shall answer the interrogatories by filing within 14 days of the day on which the interrogatories were served the statement referred to in Order 27 Rule 1 (2) and the verifying affidavit, if requested, and serving on the interrogating party within the same time a copy of the document, or, as the case may be of each document filed.

Plan, photograph or model

9. (1) A party intending to produce a plan, photograph or model at trial shall at a time to be directed by the Expedited List Judge serve on the other party a notice in writing—

- (a) specifying the plan, photograph or model;
- (b) stating where and when it may be inspected; and
- (c) requiring the other party to serve upon him, 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.

(2) Where a party gives notification that he 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 (1), the party giving the notification shall pay any costs of proving the plan, photograph or model unless the trial Judge otherwise orders.

Mediation

10. (1) An Expedited List Judge may, on any terms he thinks fit, 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.

(2) In the absence of any other order—

- (a) the conference 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 will lodge with the Associate to the Expedited List Judge, 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.

(3) An Expedited List Judge may direct that the Principal Registrar should conduct the conference.

(4) An Expedited List Judge, may on any terms he thinks fit, directs 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.

(5) A direction under this rule shall not be enforceable by writ of attachment or order of committal.

Referees

11. (1) An Expedited List Judge may of his own motion or on application by any party refer any question or issue of fact in an Expedited Proceeding to a Referee and direct the Referee to make a report.

(2) An Expedited List Judge may give any instructions he thinks fit to the Referee in relation to a reference under paragraph (1) and to the report.

(3) An Expedited List Judge may—

- (a) determine the amount of the fees to be paid to a Referee; and
- (b) direct how, when and by whom the whole or any part of the fees referred to in subparagraph (a) are to be paid.

(4) An Expedited List Judge may give directions for the provision—

- (a) of services of officers of the Court; and
- (b) of Court rooms and other facilities,

for the purpose of any reference to a Referee.

(5) Where a Referee is appointed under paragraph (1) the Expedited List Judge may give directions with respect to the conduct of proceedings under the reference.

(6) Evidence before the Referee—

- (a) may be given orally or in writing; and
- (b) shall, if the Referee so requires, be given on oath or affirmation or by affidavit.

(7) Evidence additional to the evidence taken before the Referee may not be adduced before the Court except with the leave of the Court.

(8) An Expedited List Judge or the Judge at the trial of the Expedited Proceeding may, of his own motion or on application by any party or a Referee set aside or vary any order under paragraph (1) or paragraph (5).

(9) To the extent that it is not inconsistent with this Rule, Order 35 shall apply to the appointment of a Referee by an Expedited List Judge.

Entry for trial

12. (1) An Expedited Proceeding shall be entered for trial in accordance with the directions of an Expedited List Judge.

(2) Order 33 shall not apply to Expedited Proceedings.

(3) Where an order is made that an Expedited Proceeding be entered for trial, the party obtaining the order shall forthwith file a formal entry for trial.

Removal from the Expedited List

13. An Expedited List Judge may at any time, on the application of any party or on his own motion, order that an action in the List be removed from the List.

Inconsistencies with other Rules

14. Where any of the Rules of this Order are inconsistent with these Rules the Rules of this Order, in relation to Expedited Proceedings, shall prevail. "

*[*Reprinted in the Gazette of 18 March 1986 at pp. 779-1100. For amendments to 12 February 1990 see pp. 373-374 of 1988 Index to Legislation of Western Australia and Gazette of 15 December 1989.]*

Dated 14 February 1990.

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