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**JUSTICE**

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JU301

Supreme Court Act 1935

**Supreme Court Amendment Rules (No. 2) 2020****SL 2020/242**

Made by the judges of the Supreme Court.

**1. Citation**

These rules are the *Supreme Court Amendment Rules (No. 2) 2020*.

**2. Commencement**

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

**3. Rules amended**

These rules amend the *Rules of the Supreme Court 1971*.

**4. Note for Order 11A Division 1 amended**

At the beginning of Order 11A Division 1 delete note 3 and insert:

- 3. Information about the Hague Convention, including a copy of the Hague Convention, a list of all Contracting States, details of declarations and reservations made under the Hague Convention by each of those States and the names and addresses of the central and other authorities of each of those States can be found at the website of the Hague Conference on Private International Law.

**5. Order 58 amended**

- (1) In Order 58 rule 14(1) delete “his” and insert:

the applicant’s

- (2) In Order 58 rule 14(2) delete “shall” (each occurrence) and insert:

must

- (3) In Order 58 rule 14(3) delete “in the Central Office.” and insert:

with the seal of the Court.

- (4) Delete Order 58 rule 14(4).

- (5) In Order 58 rule 14(5):

- (a) delete “shall” and insert:

must

- (b) delete “thereof,” and insert:

of the Act (if any),

- (6) In Order 58 rule 19(1) delete “time shall be fixed by a notice in Form No. 76 which shall be sealed in the Central Office.” and insert:

time must be fixed by a notice in Form 76 which must be sealed with the seal of the Court.

- (7) In Order 58 rule 19(4)(a) delete “in the Central Office; and” and insert:

with the seal of the Court; and

**6. Order 59 amended**

- (1) In Order 59 rule 4(2) delete “in the Central Office.” and insert:

with the seal of the Court.

- (2) Delete Order 59 rule 4(3).

- (3) In Order 59 rule 4(4) delete “shall” and insert:

must

**7. Order 67 amended**

- (1) In Order 67 rule 1:

- (a) delete “senior master shall” and insert:

Chief Justice or the Principal Registrar must

- (b) delete “and shall give” and insert:

and give

- (2) In Order 67 rule 16 delete “senior master” and insert:

Chief Justice or the Principal Registrar

**8. Order 69 amended**

- (1) In Order 69 rule 2(1):

- (a) delete “shall,” and insert:

must,

- (b) delete “senior master — ” and insert:

Principal Registrar —

- (c) in paragraph (c) delete “writing and of such size as the senior master from time to time directs; and” and insert:

writing; and

- (d) after paragraph (c) insert:

- (ca) comply with subrule (1AA); and

- (e) in paragraph (d) delete “40” (each occurrence) and insert:

30

- (2) After Order 69 rule 2(1) insert:

(1AA) The textual content of a document, including any endnotes, footnotes and quotations, must be typewritten or printed using at least the size of print used for these rules (12 point Times New Roman).

(1AB) Except as provided in subrule (1AC), a document may show an abbreviation of the title of the proceeding which is sufficient to identify the proceeding.

(1AC) Subrule (1AB) does not apply to the following documents —

- (a) an originating process;

- (b) a document to be served on a person who is not a party to a proceeding;
- (c) a final judgment or order.

- (3) Delete Order 69 rule 2(1a).

**9. Order 70 amended**

- (1) In Order 70 rule 1 delete the definitions of:

*Act*

*represented person*

- (2) In Order 70 rule 1 insert in alphabetical order:

*GAA Act* means the *Guardianship and Administration Act 1990*;

*represented person* means a person in respect of whom a guardian or administrator has been appointed under the GAA Act with authority to do either or both of the following —

- (a) as the next friend of the represented person, to commence, conduct or settle on behalf of the represented person specified proceedings, some proceedings or all proceedings;
- (b) as the guardian *ad litem* of the represented person, to defend or settle specified proceedings, some proceedings, or all proceedings, that are taken against the represented person.

- (3) In Order 70 rule 1 in the definition of *person under disability* paragraph (c) delete “his” and insert:

their

- (4) Delete Order 70 rule 2(1) and insert:

- (1) Except as provided in subrule (4) a person under disability —

- (a) cannot bring, or make a claim in, any proceedings except by the person’s next friend; and
- (b) cannot defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order, notice of which has been served on the person, except by the person’s guardian *ad litem*.

- (5) In Order 70 rule 2(2):
- (a) delete “shall” and insert:  
  
must
  - (b) delete “his” and insert:  
  
the person’s
- (6) After Order 70 rule 2(4) insert:
- (5) If a person under disability is a represented person, the next friend or guardian *ad litem* of the represented person in any proceedings must be —
    - (a) a guardian or administrator of the represented person authorised under the GAA Act Part 5 or 6 to act as next friend or guardian *ad litem*, as the case may be, in those proceedings; or
    - (b) some other person appointed by the Court to be the next friend or guardian *ad litem*, as the case may be, in those proceedings.
  - (6) An appointment by the Court under subrule (5)(b) may be —
    - (a) of its own motion; or
    - (b) on an application made under rule 5.
  - (7) For the purposes of subrule (6)(b) the Court may vary the requirements of rule 5 as it considers appropriate in the circumstances.
- (7) In Order 70 rule 3(2) delete “necessary.” and insert:
- necessary for the purpose of a proceeding to which this rule applies.
- (8) Delete Order 70 rule 3(3) and (4) and insert:
- (3) If a person under disability is a represented person, a guardian or administrator authorised under the GAA Act Part 5 or 6 to act as next friend or guardian *ad litem*, as the case may be, of the represented person in the proceedings is the next friend or guardian *ad litem*, as the case may be.

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- (4) Subrule (3) does not apply, in a case to which subrule (5) or (6) or rule 6 applies, if some other person is appointed by the Court to be the next friend or guardian *ad litem*, as the case may be, of the represented person in those proceedings.
- (9) In Order 70 rule 3(5):
- (a) delete “shall be” and insert:
- is
- (b) delete “him” and insert:
- another person
- (10) In Order 70 rule 3(6):
- (a) delete “thereto” and insert:
- to the proceedings
- (b) delete “shall” and insert:
- must
- (11) Delete Order 70 rule 3(7) and insert:
- (7) Except where the next friend or guardian *ad litem* of a person under disability has been appointed by the Court, is a guardian or administrator referred to in subrule (3), or is the Public Trustee, the documents specified in subrule (8) must be filed before —
- (a) the name of any person can be used in a cause or matter as next friend of the person under disability; and
- (b) an appearance can be entered in a cause or matter for the person under disability; and
- (c) the person under disability is entitled to appear by the person’s guardian *ad litem* on the hearing of a petition, summons or motion which, or notice of which, has been served on the person.

(12) Delete Order 70 rule 3(8)(b) and (c) and insert:

- (b) an affidavit by the solicitor for the person under disability deposing —
  - (i) that the solicitor knows or believes, as the case may be, that the person to whom the affidavit relates is an infant or a represented person, stating (in the case of a represented person) the grounds of that knowledge or belief; and
  - (ii) that the person named in the affidavit as next friend or guardian *ad litem*, as the case may be, has no interest in the cause or matter in question adverse to that of the person under disability; and
  - (iii) that in the case of an infant (who is not a represented person) who has attained the age of 14 years, the infant consents to the person named in the affidavit acting as next friend or guardian *ad litem*, as the case may be.

(13) After Order 70 rule 3(8) insert:

- (9) If the person who is the next friend or guardian *ad litem*, as the case may be, of a represented person and is authorised under the GAA Act Part 5 or 6 to conduct proceedings in a cause or matter in the name of the represented person or on behalf of the represented person, a copy of the order made under the GAA Act Part 5 or 6 giving the authority must be filed before —
  - (a) the name of any person can be used in the cause or matter as next friend of the represented person; and
  - (b) an appearance can be entered in a cause or matter for the represented person; and
  - (c) the represented person is entitled to appear by the person's guardian *ad litem* on the hearing of a petition, summons or motion which, or notice of which, has been served on the person.

(14) Delete Order 70 rule 4(2) and insert:

- (2) Except as provided in subrule (3), a person must not act in a probate action as next friend or guardian *ad litem* of a person under disability unless appointed to so act by the Court.

- (15) In Order 70 rule 4(3):
- (a) delete paragraph (a) and insert:
    - (a) in the case of a represented person, the person is the guardian or administrator authorised under the GAA Act Part 5 or 6 to conduct legal proceedings in the name of the represented person;
  - (b) in paragraph (b) delete “he” and insert:

the person
  - (c) in paragraph (c) delete “him or her to act as his or her” and insert:

the infant to act as the infant’s
- (16) In Order 70 rule 4(4):
- (a) delete “him” and insert:

the person
  - (b) delete “he” and insert:

the person
- (17) In Order 70 rule 4(5):
- (a) delete “Part 5 or Part 6 of the Act” and insert:

the GAA Act Part 5 or 6
  - (b) in paragraph (b)(iii) delete “he” and insert:

the proposed next friend or guardian *ad litem*
- (18) In Order 70 rule 5(2) delete “(as respects that person)” and insert:

(as respects the person under disability)
- (19) In Order 70 rule 5(5)(d) delete “him.” and insert:

the person under disability.



- (20) In Order 70 rule 6(b) delete “him.” and insert:

that person.

- (21) In Order 70 rule 7(2) delete “shall” and insert:

must

- (22) Delete Order 70 rule 8 and insert:

**8. No implied admission from pleading**

Despite anything in Order 20 rule 14(1), a person under disability is not taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that the allegation was not traversed in the pleadings of the person under disability.

- (23) In Order 70 rule 9:

- (a) delete “shall”;
- (b) delete “his” and insert:

the person’s

- (24) In Order 70 rule 10(1) delete “shall be” and insert:

is

- (25) In Order 70 rule 10(2):

- (a) delete “shall” (each occurrence) and insert:

must

- (b) delete “or judge”.

- (26) In Order 70 rule 12(1) delete “shall,” and insert:

must,

- (27) Delete Order 70 rule 13(3) and insert:

- (3) If the person to be served is a person under disability only because of infancy and has no next friend or

guardian *ad litem* in the proceedings, the document may be served —

- (a) if the person is aged 16 years or upwards, on the person; or
- (b) on one of the person's parents or the person's guardian; or
- (c) if the person has no parent or guardian, on the person with whom the person resides or in whose care the person is.

(28) Delete Order 70 rule 13(4) and insert:

- (4) If the person to be served is a represented person as defined in the GAA Act section 3(1) and has no next friend or guardian *ad litem* in the proceedings, the document may be served —
  - (a) on the Public Trustee if the person is a represented person as defined in the *Public Trustee Act 1941* section 2; or
  - (b) on the person with whom the represented person resides or in whose care the person is.

(29) In Order 70 rule 13(5) delete “shall be deemed” and insert:

is taken

(30) In Order 70 rule 13(7) delete “him,” and insert:

the person,

## **10. Order 75 amended**

(1) Delete Order 75 rule 3 and insert:

### **3. Copy of summons to be placed on probate file or linked to electronic file**

- (1) Upon the issue of an originating summons under this Order, the person presenting the summons for sealing must deliver to the Principal Registrar or file electronically a copy of the will of the testator as admitted to probate or annexed to letters of administration of the testator's estate.

- (2) The Principal Registrar must —
- (a) cause a copy of the summons to be placed on the probate file in the Registry; or
  - (b) link an electronic copy of the summons to the Court's electronic file for the probate matter.
- (3) The Principal Registrar, in writing, may delegate the Principal Registrar's functions under subrule (2) to 1 or more officers of the Court.

- (2) Delete Order 75 rule 10.

**11. Schedule 2 Form 5B amended**

In Schedule 2 Form 5B delete “[*Central Authority/additional authority*]:” and insert:

*[person to be served]:*

Note: The headings to the amended rules listed in the Table are to read as set out in the Table.

**Table**

| <b>Amended rule</b> | <b>Rule heading</b>   |
|---------------------|---|
| Order 59 r. 4       | <b>Form and issue of summons</b>                              |
| Order 69 r. 2       | <b>Requirements as to documents prepared by parties</b>       |
| Order 70 r. 3       | <b>Appointment of next friend or guardian <i>ad litem</i></b> |
| Order 70 r. 4       | <b>Special provisions for probate actions</b>                 |
| Order 70 r. 5       | <b>Procedure on no appearance by person under disability</b>  |

The Hon. Chief Justice Peter Quinlan  
Chief Justice of Western Australia  
Supreme Court of Western Australia

Date 10 December, 2020.

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