

1990 - No. 112

SUPREME COURT ACT 1970 - RULE

NEW SOUTH WALES



[Published in Gazette No 29 of 23 February 1990]

SUPREME COURT RULES (AMENDMENT No. 237) 1990

1. These rules are made by the Rule Committee on 12 February 1990.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 1 rule 3
From the matter relating to Part 51A omit "DIVISION 1 - *General*" and "DIVISION 2 - *State Taxation Appeals*".
 - (b) Part 51A
 - (i) Omit "DIVISION 1 - *General*".
 - (ii) Omit Division 2.
 - (c) SCHEDEULE H Part 1
From the matter relating to the Land Tax Management Act 1956 omit "38A, 38B, 38C Case stated by Chief Commissioner" and insert instead:
in the column "Section (unless otherwise in column 2: stated)":
"38B..". Appeal.
38BE..". Stated case.".
 - (d) SCHEDEULE H Part 1
From the matter relating to the Pay-roll Tax Act 1971 omit "33 Assessment of Tax" and insert instead:
in the column "Section (unless otherwise in column 2: stated)":
"32(8)". Appeal.
32F". Stated case.".
3. Paragraph 2 of this Amendment shall not apply to proceedings in the Court on an objection which may not, under section 6 of

the Pay-roll Tax (Amendment) Act 1989, be dealt with as an objection under the new appeal provisions as defined in that section or which may not, under Schedule 2 clause 9 of the Land Tax Management Act 1956, be dealt with under the new appeal provisions as defined in that clause.

4. The Supreme Court Rules 1970 are further amended as follows:

- (a) Part 12 rule 5 (a) (iii)
Omit "sections 84AA, 89 and 91 (5A) of".
- (b) Part 12 rule 5 (a) (vi)
Omit "sections 68A, 81 (9) (b) and 84 (6) of".
- (c) Part 12 rule 5 (a) (xii)
Omit the subparagraph and insert instead:
(xii) the Friendly Societies Act 1989;
- (d) **SCHEDULE H Part 1**
 - (i) Omit "Co-operation Act, 1923" and the matter beside that Act.
 - (ii) Omit "Friendly Societies Act, 1912" and the matter beside that Act.
 - (iii) Omit "Permanent Building Societies Act, 1967" and the matter beside that Act.

5. The Supreme Court Rules 1970 are further amended as follows:

Part 12 rule 7

Omit the rule and insert instead:

Business assigned to one of several Divisions.

7. Proceedings in the Court in which a claim is made for relief under:

- (a) the Fair Trading Act 1987 (except business assigned by section 53D of the Act to the Criminal Division);
- (b) Division 1 or 1A of Part V of the Trade Practices Act 1974,

shall be assigned to the Common Law Division, the Equity Division or the Commercial Division as is appropriate to the nature of the proceedings.

6. The Supreme Court Rules 1970 are further amended as follows:
 - (a) Part 23 rule 15 (3)
Omit "professional".
 - (b) Part 23 rule 9 (3)
Omit "professional".
7. The Supreme Court Rules 1970 are further amended as follows:
 - (a) Part 33 rule 8A (1)
Omit "This rule" and insert instead "Subrule (2)".
 - (b) Part 33 rule 8A (2)
Omit "this rule" and insert instead "this subrule".
 - (c) Part 33 rule 8A (3)
Omit the subrule and insert instead:
 - (3) Subrule (4) applies to proceedings in the Common Law Division in which a claim made under the Compensation to Relatives Act 1897 includes a claim for loss of maintenance and support.
 - (4) The plaintiff shall not file a notice to set down for trial proceedings to which this subrule applies unless the party has served on all other parties who have an address for service in the proceedings a statement setting out:
 - (a) the name and address of each employer of the deceased person during the 12 months preceding death with details of the periods of employment, capacity in which employed, net earnings during each period of employment and the basis of any assertion that those earnings would have increased but for death;
 - (b) where the deceased person was self-employed, such particulars as will achieve full disclosure of the basis of the claim;
 - (c) particulars of expenses of the funeral or cremation of the deceased person or the cost of erecting a headstone or tombstone over the grave of the deceased person, together with:

- (d) copies or originals of all documents available to the plaintiff in support of the claim including:
 - (i) letters from employers, wage records, income records and group certificates; and
 - (ii) material from which the particulars referred to in paragraph (b) were derived.
- (5) Where subrule (2) applies, the statement mentioned in subrule (2) (a)-(d), and, where subrule (4) applies, the statement mentioned in subrule (4) (a)-(c), shall be filed with the notice to set down for trial.
- (6) Subrules (3), (4) and (5) do not affect the requirements of section 6 of the Compensation to Relatives Act 1897 (which section relates to a particular of the nature of the claim, etc).

8. The Supreme Court Rules 1970 are further amended as follows:

- (a) Part 45 rule 15 (2)
After "notice" insert "in Form 57A".
- (b) Part 45 rule 18
After "memorandum" insert "in Form 57B".
- (c) SCHEDULE F Form 57A
 - (i) From the sidenote to the form omit "9 (2)" and insert instead "15 (2)".
 - (ii) Omit paragraphs 2 and 3 of the notice and insert instead:
 - 2. Unless the writ is satisfied or you make arrangements as mentioned in paragraph 3 or obtain an order mentioned in paragraph 4, your land, described in the Schedule below, may be sold by the Sheriff under the authority of the writ.
 - 3. You may make arrangements for the sale or mortgage of the land by you subject to the judgment creditor's consent. That consent will only be given on condition that an amount for the proceeds of the sale or mortgage, stipulated by the judgment creditor, is paid to

the Sheriff towards satisfaction of the writ of execution. If you wish to make any such arrangements you should contact the judgment creditor's solicitor immediately.

4. You may apply to the Court for an order staying proceedings on terms, which may include terms as to payment by instalments of the money to be levied under the writ.
- (d) **SCHEDULE F Form 57B**
From the sidenote to the form omit "12" and insert instead "18".
9. Part 67 rule 11 (3) of the Supreme Court Rules 1970 is amended by omitting "speech" and inserting instead "oral utterance".
10. The Supreme Court Rules 1970 are further amended as follows:
 - (a) **SCHEDULE H Part 1**
Under the matter relating to the Building and Construction Industry Long Service Payments Act 1974 insert:

in the column "Act":	in the column "Section (unless otherwise stated)":	in column 2
"Business Franchise Licences (Petroleum Products) Act 1987 ..	Part 6 Division 2	Appeals.
Business Franchise Licences (Tobacco) Act 1987 ..	Part 8 Division 2	Applications.
 - (b) **SCHEDULE H Part 1**
Under the matter relating to the Pipelines Act 1967 insert:

in the column "Act":	in the column "Section (unless otherwise stated)":	in column 2
"Public Health Act 1902	50OC	Continuation of order.
	50OG	Appeal.".
 - (c) **SCHEDULE H Part 1**
Under the matter relating to the Technical and Further Education Act 1974 insert:

in the column "Act":	in the column "Section (unless otherwise stated)":	in column 2:
"Trade Measurement Administration Act 1989	21	Appeal.".

11. The Supreme Court Rules 1970 are amended as follows:

- (a) Part 14A
From the heading to the Part omit "BUILDING AND ENGINEERING" and insert instead "CONSTRUCTION".
- (b) Part 72A rule 1A (1) (a)
Omit "Building and Engineering" where appearing and insert instead "Construction".
- (c) SCHEDULE D Part 2
 - (i) Omit the provision Part 14" and the matter beside that provision.
 - (ii) From the matter beside the provision "Part 14A" omit "Building and Engineering" and insert instead "Construction".

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The purposes of the above Amendment are:
 - (1) to omit rules relating to appeals under the Land Tax Management Act 1956 and the Pay-roll Tax Act 1971, consequentially on the amendments of those Acts by Acts No. 222 and 221 of 1989 respectively (paragraphs 2 and 3);
 - (2) to assign all business under the Co-operation Act 1923, the Permanent Building Societies Act 1967 and the Friendly Societies Act 1989 to the Equity Division (paragraph 4);
 - (3) to assign business under the Trade Practices Act 1974 to appropriate Divisions (paragraph 5);
 - (4) to change from "professional misconduct" to "misconduct" the consequences of a failure by a solicitor to notify a client of an order for discovery etc (paragraph 6);
 - (5) to require, in Compensation to Relatives Act 1897 claims, particulars of the deceased's wages etc to be served before filing notice to set the proceedings down for trial (paragraph 7);

1990 - No. 112

- (6) to add a paragraph to the form of notice to judgment debtor of intention to sell land for the purposes of the rule which prescribes the form (paragraph 8);
- (7) to alter a word in a rule for conformity with the Defamation Act 1974 (paragraph 9);
- (8) to assign business under the Business Franchise Licences (Petroleum Products) Act 1987, the Business Franchise Licences (Tobacco) Act 1987, ss 50OC and 50OG of the Public Health Act 1902 and the Trade Measurement Administration Act 1989 to the Administrative Law Division (paragraph 10);
- (9) to change references to the Building and Engineering List to references to the Construction List (paragraph 11);
- (10) to make other provisions of a minor, consequential or ancillary nature.

2. Words or figures underlined in the above rules are intended to be represented in italics if printed.

B. H. BROWN, Secretary of the Rule Committee.