

1990 - No. 197

SUPREME COURT ACT 1970 - RULE

NEW SOUTH WALES



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SUPREME COURT RULES (AMENDMENT No. 239) 1990

1. These rules are made by the Rule Committee on 12 February 1990.
2. The Supreme Court Rules 1970 are amended as follows:

<i>Part</i>	<i>Rule</i>	<i>omit</i>	<i>insert</i>
5	8 (b)	direct the entry of	give
13	2 (1) (2)	direct the entry of	give
13	3 (2)	directs the entry of	gives
13	3 (2)	direction	judgment
13	3 (2)	may, on terms, stay	may stay
13	3 (2)	directed to be entered	given
13	6 (a) (i)	a direction for entry of	
17	9 (1) (2)	direct the entry of	give
17	10 (2)	direct the entry of	give
18	3 (1)	direct the entry of	give
23	15 (1)	make	give or make such judgment or
23	15 (1)	that judgment be entered	the giving of judgment
24	9 (1)	make	give or make such judgment or
24	9 (1) (b)	that judgment be entered	the giving of judgment
25	10 (1)	make	give or make such judgment or
25	10 (1) (b)	that judgment be entered	the giving of judgment

1990 - No. 197

31	4 (1)	direction for entry of judgment or a specified order shall be made	judgment or order shall be given or made
31	4 (2)	make the agreed direction	give or make the agreed judgment
31	5 (b)	<i>the paragraph</i>	(b) give or make such judgment or order as the nature of the case requires.
31	6 (d)	direct the entry of	give
34	8 (2)	an order directing the entry of <i>where</i> appearing	
34	8 (3)	direct the entry of	give
34	10 (1)	by order direct the entry of	give
40	1	direct the entry of	give
40	2	directs the entry of	gives
40	3 (1) (2)	<i>the subrules</i>	(1) A judgment shall take effect: (a) where it is given in Court - as of the date on which it is given; (b) otherwise - as of the date of entry.
40	3 (3)	subrules (1) and (2)	subrule (1)
40	3 (5)	(2),	
40	7 (1)	directs the entry of	gives
40	9 (1)	, on terms,	
40	9 (1)	direction for entry of	
40	9 (1)	, on terms,	
40	9 (2) (b)	pursuant to a direction	after judgment has been
40	9 (2) (b)	the direction	the judgment
40	9 (2) (c)	pursuant to a direction	after judgment has been
40	11 (1)	a direction for entry of judgment for possession of land shall not be made nor shall judgment for possession of land be	judgment for possession of land shall not be given or

1990 - No. 197

41	9 (2)	makes a direction for entry of	gives
41	10	<i>the rule</i>	
41	11	<i>Order from the headnote</i>	Judgments and orders
41	11 (1)	<i>the subrule</i>	(1) Any judgment or order given or made shall, subject to subrules (3) and (4), be entered.
41	11 (2)	<i>the subrule</i>	
41	11 (3)	(2)	(1)
41	11 (4)	(2)	(1)
42	8 (3) (c)	or order	
46	9	direct the entry of	give
46	10	direct the entry of	give
49	1 (3)	making of a direction for entry	giving
49	3 (2)	makes a direction for entry of	gives
49	3 (4) (a)	direction for entry of judgment was made	judgment was given
51	1 (1)	<i>paragraph (a) of of the definition of "material date"</i>	(a) in the case of a judgment given in proceedings in the Court, the date on which the judgment is given;
51	16 (4)	direct the entry of	give
52	10(2)	directed to be entered	given
52	63	direct the entry of	give
56	9 (b) (vii)	direct the entry of	give
56	11 (1) (3)	direct entry of	give
56	14	direct the entry of	give
60	3	direction for entry of	
60	11 (5) (a)	directed to be entered	given
60	11 (5) (a)	of the direction for entry	on which the judgment was given
68	6	a judgment or	an
68	8 (1)	direct the entry of judgment or	
68	8 (1)	judgment or	
68	8 (2)	a judgment or	an
68	8 (2) (a)	direct the entry of judgment	make the order
68	8 (2) (b)	judgment or	
72	13 (1)	direct the entry of	give

3. Schedule E Part 2 paragraph 2 of the Supreme Court Rules 1970 is amended by omitting "Any direction by consent for entry of judgment" and inserting instead "Any judgment by consent".
4. The Supreme Court Rules 1970 are further amended as follows:
 - (a) Part 41 Division 1
Omit the Division.
 - (b) Part 41 rule 2
Omit the rule.
 - (c) Part 41 rule 3
Omit "Where" and insert "(1) Where" and after subrule (1) insert:
 - (2) Unless entry is authorised by the rules, the party lodging the draft minute shall, not less than two days beforehand, serve the draft on each party affected by the judgment or order.
 - (d) Part 41 rule 4
Omit the rule and insert instead:
Summary settlement or appointment for settlement.
 4. (1) Where the party lodges a draft minute of a judgment or order with the registrar, the registrar may:
 - (a) settle the draft without an appointment for attendance of the parties; or
 - (b) appoint a time and place for attendance of the parties on settlement of the draft and notify the appointment to the party lodging the draft minute.
 - (2) The party lodging the draft minute shall, not less than two days before the appointed date, serve notice of the appointment on the other party.
 - (e) Part 41 rule 5
Omit the rule.
 - (f) Part 41 rule 7 (1)
Omit "may, subject to subrule (3), draw" and insert instead "may draw".

- (g) Part 41 rule 7 (3)
Omit the subrule.
- (h) Part 41 rule 12
Omit the rule.
- (i) Part 41 rule 13
Omit the rule and insert instead:

Manner of entry

- 13. (1) Where the entry of a judgment or order is authorised by the rules or a judgment or order is given or made, a party or, subject to subrule (3), the registrar, may file a minute of it signed by the registrar or by the Judge or master by whom the judgment or order is given or made.
- (2) The judgment or order is entered when the registrar seals the minute so signed and filed.
- (3) Subject to Part 76 rule 7 and Part 80 rule 6, the registrar shall not file or seal the minute in proceedings in a Division unless the Court so directs or a party so requests.
- (4) Where, in proceedings on a claim for damages or other money, the solicitors for the parties have signed an agreement showing the terms in which judgment may be entered, the agreement may be filed and judgment may, on the production of a minute of judgment bearing the signed consents of the solicitors, be entered accordingly.

- (j) Part 41 rule 14
Omit the rule.
- (k) Part 61 rule 5
Omit the rule and insert instead:

Powers

- 5. (1) The chief clerk may exercise the powers of a registrar:
 - (a) under Part 41 (which relates to minutes and entry of judgments and orders);

- (b) under Part 80 rule 6 (which relates to minutes of judgments etc. under the Companies (New South Wales) Code);
 - (c) under Schedule E Part 2 paragraphs 5 and 6 (which relates to certificates with respect to judgments and orders).
- (2) The word "registrar" in Part 41 rule 9 and Part 61 rules 2, 2A, 3 and 4 includes the chief clerk
- (l) Part 75 rule 6 (f)
Omit ", as if the proceedings were proceedings in the Common Law Division".
- (m) Part 76 rule 7
Omit the rule and insert instead:
Minute of judgment or order.
7. Notwithstanding Part 41 rule 13 (3), the registrar may, in proceedings in the Protective Division, file or seal a minute of a judgment or order without a direction of the Court or request of a party.
- (n) Part 80 rule 6
Omit the rule and insert instead:
Minute of judgment or order.
6. Notwithstanding Part 41 rule 13 (3), the registrar may, in proceedings under the Code, file or seal a minute of a judgment or order without a direction of the Court or request of a party.
cf. C.R. 1968r. 17(1).
- (o) SCHEDULE E Part 1
From the matter relating to Part 41 omit "Rule 12 Time for entry of judgment or order."
5. This Amendment shall not apply in respect of any order, direction or leave for the entry of judgment made or given before this Amendment takes effect.

EXPLANATORY NOTE

(This Note does not form part of the rules)

1. The purposes of paragraphs 2 and 3 of the above Amendment are to make alterations to the rules consequentially on the amendment by Schedule 1 to the Statute Law (Miscellaneous Provisions) (No. 3) Act 1989 of the Supreme Court Act 1970.
2. The purposes of paragraph 4 of the above Amendment are:
 - (1) to eliminate differences in the mode of entry of minutes of judgments and orders in the Court of Appeal and Divisions (Except, in part, the Probate Division, the Protective Division and, so far as concerns Companies Code business the Equity Division);
 - (2) to omit the requirement to wait seven days after settlement before entering a minute;
 - (3) to provide for entry by the registrar by sealing a minute not merely filing and signing it;
3. Whatever is underlined in the above Amendment is intended to be represented in italics if printed.

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