

1990 - No. 231

SUPREME COURT ACT 1970 - RULE

NEW SOUTH WALES



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SUPREME COURT RULES (AMENDMENT No. 240) 1990

1. These rules are made by the Rule Committee on 9 April 1990.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 4 rule 2 (1)
Omit "property" and insert instead:
"property;
 - (d) where a claim is made by the plaintiff for relief in respect of any trust other than an express trust wholly in writing".
 - (b) Part 5 rule 7
Omit "Without" and insert instead "(1) Without" and after subrule (1) insert:
 - (2) The Court may, on or after making an order under subrule (1) (a), make orders for the filing of a statement of claim or other pleadings.
 - (3) Subject to any order of the Court:
 - (a) a statement of claim to be filed pursuant to an order under this rule shall not bear the note required by Part 7 rule 3 but shall bear the following note addressed to the defendant – "You are liable to suffer judgment or an order against you unless you comply with the rules of the Court relating to your defence";
 - (b) the plaintiff shall, on the day of filing, serve the statement of claim on the defendant;

- (c) the defendant shall, subject to Part 15 rule 3 (2), file his defence within 21 days after the service of the statement of claim on him.
- (c) Part 16 rule 1 (1A)
Omit "5A" and insert instead "5B".
- (d) Part 16 rule 6 (1)
Omit "5A" and insert instead "5B".
- (e) Part 52 rule 24
Omit subrules (8) and (9).
- (f) Part 52
After rule 24 insert:
De Facto Relationships Act 1984.
24A Where the plaintiff commences proceedings in the Court for an order or relief under the De Facto Relationships Act 1954 and the Court:
 - (a) in relation to property, declares a right or adjusts an interest; or
 - (b) makes an order for maintenance,
of a value or amount which does not exceed the amount prescribed at the time of commencement of the proceedings by section 12 of the Local Courts (Civil Claims) Act 1970:
 - (c) the plaintiff shall not be entitled to payment of his costs of the proceedings unless the Court otherwise orders; and
 - (d) where the Court makes an order for the payment of the defendant's costs of the proceedings and the costs are taxed on a party and party basis or an indemnity basis under rule 17 (4), the costs of briefing more than one counsel for the defendant shall not be allowed unless the Court or the taxing officer otherwise orders.

Orders for non-application of rules 24 and 24A

- 24B. (1) The Court may, on the application of any person, order that rule 24 (2), (3), (5) and (6) or rule 24A shall not apply in respect of proceedings to be commenced or commenced in the court.

- (2) Where an order is made under subrule (1) in respect of proceedings to be commenced, the originating process by which the proceedings are later commenced shall bear a note of the order made.
- (g) Part 60 rule 17
 - (i) From paragraph (d) omit "or"
 - (ii) Omit paragraph (e) and insert instead:
 - (e) in proceedings under the De Facto Relationships Act 1984; or
 - (f) in proceedings on an application for review of taxation of costs.
- (h) Part 77 rule 74
 - Omit "by summons under Part 5 rule 4A".
- (i) Part 77 rule 76
 - Omit "The summons and any cross-claim" and insert instead "Documents".
- (j) Part 77
 - After rule 76 insert:
Pleading and particulars.
76A.
 - (1) Proceedings in the Court under the subject Act shall be commenced by statement of claim.
 - (2) The Material facts required by Part 15 rule 7 in the statement of claim shall include the facts alleged to constitute any contribution within the meaning of section 20 (1) of the subject Act on which the plaintiff relies.
 - (3) The particulars required by Part 16 rule 1 in relation to a statement of claim shall include particulars of:
 - (a) any payment relied on in respect of any contribution;
 - (b) any voucher relied on in respect of any payment.

(k) SCHEDULE D Part 1

In the matter relating to Act No. 6 of 1919 insert above the matter relating to section 66G:

in column 1	in column 2	in column 3
"Section 36A..	Division of chattels"

(l) SCHEDULE D Part 1

Omit the matter in column 3 relating to Act No. 147 of 1984.

EXPLANATORY NOTE

(This note does not form part of the rules).

1. The purposes of the above amendment are:

- (1) to require the commencement by statement of claim of proceedings for relief in respect of certain implied trusts (paragraph 2 (a));
- (2) to require that the note on a statement of claim which is filed on an order for continuation on pleadings be made also on a statement of claim filed on an order for defining the issues by pleadings (paragraph 2 (b));
- (3) to prescribe the manner of giving particulars of aggravated damages (paragraph 2 (c) and (d));
- (4) to provide for costs in proceedings under the De Facto Relationships Act 1984 which could have been brought in a Local Court (paragraph (e) and (f));
- (5) to permit a master to exercise the powers of the Court in proceedings under the De Facto Relationships Act 1984 (paragraph) 2 (1) and to provide for appeal to the Court of Appeal (paragraph 2 (g));
- (6) to require proceedings under the De Facto Relationships Act 1984 to be commenced by statement of claim containing particulars of contributions made under that Act (paragraph 2 (h) (i) and (j));
- (7) to permit a master to exercise the powers of the Court under s. 36A of the Conveyancing Act 1919 (division of chattels) (paragraph 2 (k));
- (8) 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.
