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SUPREME COURT ACT 1970 - RULE

NEW SOUTH WALES



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SUPREME COURT RULES (AMENDMENT NO. 241) 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 33
After rule 8A insert:
Notification of compromise, etc.
8B. The parties to proceedings commenced in the Court shall, where it is a fact that:
 - (a) there is an agreement for compromise or settlement of the proceedings;
 - (b) the proceedings are discontinued; or
 - (c) an appearance or defence is withdrawn, forthwith notify the registrar of the fact.
cf. R.S.C. (Rev.) 1965, 0.34, r.8.
 - (b) Part 34 rule 7 (2)
Omit "and, where the trial is with a jury, before verdict".
 - (c) Part 34
After rule 8 insert:
8A. Where, at a trial with a jury, a verdict is given or a finding or assessment is made, the Court may, on the motion of any party or of its own motion, give judgment as it thinks fit notwithstanding the verdict.
 - (d) Part 52 rule 17 (4)
 - (i) Omit "from the date" and insert instead "from the day".

(ii) Omit "before that date" and insert instead "before and on that day".

(e) Part 52 rule 17
After subrule (4) insert:

(4A) For the purpose of subrule (4), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the Court otherwise orders, the plaintiff shall be entitled to his costs in respect of the claim from 11 a.m. on the day following the day on which the offer was made, taxed on an indemnity basis, in addition to his costs incurred before that time, taxed on a party and party basis.

(f) Part 76 rule 2 (c)
From subparagraph (v) omit "146 (1) of that Act" and insert instead "146 (1) of that Act;" and after subparagraph (v) insert:

(vi) under the Disability Services and Guardianship Act 1987.

(g) Part 78 rule 27 (3)
After "administration" insert "(except administration with the will annexed)".

(h) Part 80 rule 9 (5) (c)
Omit the paragraph and insert instead:

(c) unless the Company is the plaintiff or has entered an appearance, proof of:

(i) the address of its registered office at the date of search made under this subrule, being the latest address disclosed in a notice or annual return lodged with the Commission under section 84 (2) (b) (ia), section 85 (4) (fa), section 217 (1) or (3) or section 263 (1) of the Code;

(ii) the date of lodgment of the notice or return disclosing that address,
as ascertained by search made not earlier than three days before:

- (iii) if the summons was served on the Company by post - the date of posting; or
- (iv) if the summons was served otherwise - the date of service;
- (i) Part 80 rule 18 (3) (c)
Omit the paragraph and insert instead:
- (c) unless the Company is the plaintiff or has entered an appearance, proof of:
 - (i) the address of its registered office at the date of search made under this subrule, being the latest address disclosed in a notice or annual return lodged with the Commission under section 84 (2) (b) (ia), section 85 (4) (fa), section 217 (1) or (3) or section 263 (1) of the Code;
 - (ii) the date of lodgment of the notice or return disclosing that address, as ascertained by search made not earlier than three days before:
 - (iii) if the summons was served on the Company by post - the date of posting; or
 - (iv) if the summons was served otherwise - the date of service;
- (j) Schedule F Form 135A
After "liquidator." insert "The application for the winding up was filed on *(date on which the summons was filed)*."

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

- (a) Part 80 rule 26 (2)
Omit paragraphs (a) and (b) and insert instead:
 - (a) complete two forms of notice in Form 136A;
 - (b) leave a copy with, and obtain a sealed copy from the proper officer of the Court;
 - (c) serve the sealed copy on the provisional liquidator appointed:
 - (i) where the order is made before noon - before 5 in the afternoon;

- (ii) where the order is made in the afternoon - before noon of the following day,
- (d) publish once in the Government Gazette and once in a prescribed newspaper a notice in Form 137; and
- (e) serve an office copy of the minute of order on the provisional liquidator.

(b) Part 80 rule 26

After subrule (2) insert:

- (3) A sealed copy is sufficiently served on a provisional liquidator within the time prescribed in subrule (2) (c) and an office copy is sufficiently served under subrule (2) (e) if the information contained in the copy is transmitted to the provisional liquidator's facsimile transmission number by a means that reproduces, in the hands of the provisional liquidator, that information as it appears in the copy.

(c) SCHEDULE F

(i) After Form 136 insert:

FORM 136A

(Notice to provisional liquidator of appointment)

P. 80, r. 26.

To *(name and address of provisional liquidator)*:

On *(date)* the Court appointed you to be the liquidator of *(name and registered office of the Company)* provisionally.

- (ii) In the Index of Forms after the matter relating to Form 136 insert:
136A Notice to provisional liquidator of appointment (P. 80, r. 26).

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

(a) Part 52 rule 49 (1)

Omit the subrule and insert instead:

(1) A bill shall contain:

- (a) in short items, a chronological description of the work done by the solicitor, his servants and agents;

- (b) beside each item, the costs claimed for the work described in the item;
- (c) in short paragraphs, a description, having regard to the matters mentioned in rule 67 (3), of work done justifying an allowance under Schedule G Table I Appendix A clause 41 (which relates to skill, care and responsibility) of the amount claimed beside that item; and
- (d) disbursements made,
in or to the effect of Form 62AAA.

(b) SCHEDULE F

- (i) After Form 62AA insert:

FORM 62AAA.

(Items, etc. in a bill of costs). P. 52, r. 49 (1).

Work done.

- 1.] *(number the items consecutively)*
- 2.]
- 3.]

Skill care and responsibility.

- 4.]
- 5.] *(continue the consecutive numbers)*
- 6.]

Disbursements.

- 7.]
- 8.] *(continue the consecutive numbers)*
- 9.]

- (ii) In the Index to the Forms insert under the matter relating to Form 62AA.

62AAA. Items, etc. in a bill of costs (P. 52, r. 49 (1))

EXPLANATORY NOTE

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

1. The purposes of the above Amendment are:
 - (1) to require notification of a compromise or of discontinuance, etc. to be given to the Court forthwith (paragraph 2 (a));

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- (2) to permit the Court, on motion after verdict or of its own motion, to give judgment notwithstanding the verdict (paragraph 2 (b) and (c));
- (3) to make provisions relating to time and costs on an offer of compromise (paragraph 2 (d) and (e));
- (4) to assign business under the Disability Services and Guardianship Act 1987 to the Protective Division (paragraph 2 (f));
- (5) where a deceased person dies without leaving next of kin, to restrict the requirement for notice to the Crown Solicitor to applications for administration otherwise than with the will annexed (paragraph 2 (g));
- (6) on an application for a winding up order and certain other orders, to require evidence of search for the address of the registered office to include evidence of the latest address in a notice or annual return (paragraph 2 (h) and (i));
- (7) to require the date of filing of the application for a winding up order to be added to a notice to a liquidator of the liquidator's appointment (paragraph 2 (j));
- (8) to require a notice of appointment of a provisional liquidator to be served on the provisional liquidator within prescribed times and to permit service of it by fax (paragraph 3);
- (9) to require in a bill of costs that items of work done and paragraphs containing the description of skill, etc. and disbursements be all numbered consecutively under specified headings (paragraph 4);
- (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.
